

CONDENSED DEPOSITION
TRANSCRIPT
OF DAVID CRABTREE

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| <div>Page 1</div> <div>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF SOUTH CAROLINA 3 FLORENCE DIVISION 4 CASE NO.: 4:08-cv-3590-TLW 5 WESTGATE MYRTLE BEACH, LLC, a 6 Florida Limited Liability 7 Company, 8 Plaintiff, 9 vs. 10 HOLIDAY HOSPITALITY 11 FRANCHISING, INC., a Delaware 12 Corporation, 13 Defendant. 14 15 Deposition of: David Crabtree 16 Taken By: The Defendant 17 Date: May 17, 2010 18 Time: 11:41 a.m. - 4:01 p.m. 19 Location: Greenspoon Marder, P.A. 20 201 East Pine Street 21 Suite 500 22 Orlando, Florida 32801 23 Reported By: Emily W. Andersen, 24 Registered Merit Reporter 25 Zacco & Associates Reporting Services 605 East Robinson Street, Suite 430 Orlando, Florida 32801 (407)425-6789</div> | <div>Page 3</div> <div>1 INDEX 2 Page 3 Deposition of David Crabtree 4 Direct Examination By Mr. Farrier 4 5 Certificate of Oath 117 6 Certificate of Reporter 118 7 Read & Sign Letter to Witness 119 8 Errata Sheet (To be forwarded upon execution) 120 9 10 EXHIBITS 11 Defendant's 12 For Identification Page 13 Exhibit Notice of Taking 30(b)(6) Deposition 6 14 1 of Westgate Myrtle Beach, LLC 15 Exhibit Composite, Exhibit Binder 8 16 2 17 Rule 1.310 (g) Florida Rules of Civil Procedure requires 18 transcript copies to be obtained from the court reporter, 19 unless the court rules otherwise. 20 21 22 23 24 25</div> |
| <div>Page 2</div> <div>1 APPEARANCES FOR THE PLAINTIFF 2 Amanda L. Chapman, Esquire 3 David R. Lenox, Esquire 4 Of: Greenspoon Marder, P.A. 5 201 East Pine Street 6 Suite 500 7 Orlando, Florida 32801 8 (407) 425-6559 9 10 APPEARANCES FOR THE DEFENDANT 11 Richard A. Farrier, Jr., Esquire 12 Merritt Abney, Esquire 13 Of: Nelson, Mullins, Riley & Scarborough, LLP 14 151 Meeting Street 15 Sixth Floor 16 Charleston, South Carolina 29401 17 (843) 720-4301 18 19 20 21 22 23 24 25</div> | <div>Page 4</div> <div>1 PROCEEDINGS 2 ----- 3 David Crabtree, 4 Having been first duly sworn, testified as follows: 5 THE WITNESS: Yes. 6 DIRECT EXAMINATION 7 BY MR. FARRIER: 8 Q. Mr. Crabtree, I introduced myself a moment ago. 9 My name is Richard Farrier, and I'm a lawyer in Charleston, 10 South Carolina. I'll be taking your deposition today. 11 And it sounds like from our predeposition 12 introductions, this is not the first time you've ever seen 13 a deposition. 14 A. That is correct. 15 Q. You've been deposed before. 16 A. Yes. 17 Q. The local rules of our court require that I tell 18 you one thing, and that is that once this deposition 19 begins, you're not able to consult with your lawyer about 20 any matters outside of issues of privilege. That varies 21 from jurisdiction to jurisdiction. In many jurisdictions 22 it's very commonplace to go out and say how am I doing, I 23 was thinking about this, should I say it -- a normal 24 attorney/client privileged conversation with a lawyer; not 25 so with cases pending in South Carolina District Court.</div> |

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| <p>1 (Ms. Chapman exits the deposition room.) 2 BY MR. FARRIER: 3 Q. So I need to tell you that once this begins, if 4 you need to consult with your lawyer about some issue of 5 privilege, you may do that, although I have a right to exam 6 you about that discussion. Issues of privilege would 7 extend to any questioning that you feel is invasive or 8 abusive, but I don't think we'll get there, not today. 9 This deposition is a 30(b)(6) deposition. We're 10 actually deposing your employer, Westgate. One of the 11 things that is a little bit unusual -- have you been 12 through a 30(b)(6) deposition before? 13 A. I have. 14 Q. Okay. Throughout this process, I'm going to use 15 pronouns, because that's the way we speak. And when I say 16 "you" and "your", I'm referring to Westgate. When I say 17 "me" or "my", I'm referring to my client. 18 We're also going to take your deposition in your 19 personal capacity here today. And the way I'd like to do 20 that -- actually, I'm going to stop for a second, because I 21 want Amanda to be in here. 22 A. Okay. 23 (Ms. Chapman returns to the deposition room.) 24 MR. FARRIER: I was just about to talk about you, 25 Amanda, and I wanted you in here while I did it.</p> | <p>1 A. Yes. 2 Q. Number six? 3 A. Yes. 4 Q. Along with Mr. Moore, number eight? 5 A. Yes. 6 Q. Number nine? 7 A. Yes. 8 Q. Number ten? 9 A. Yes. 10 Q. Very good. The easiest way to handle this, 11 instead of taking your deposition twice, because there's 12 some overlay, I'm sure, about things that you've been 13 designated to speak about and things that you may not be 14 the designee for, but that you may be -- you may have some 15 personal knowledge of. 16 If we get into an area like that, I would ask 17 either your lawyer or you to tell me, wait a second, that's 18 outside of what we're proposing Mr. Crabtree as a depo 19 designee for. And if so, then I'll come back and try to 20 ask you the questions in your personal capacity. 21 If I, for instance, I start asking you about 22 something that fell into number seven, which is any failure 23 of the property to meet the hotel quality standards, you or 24 your lawyer might say, you know, that's really not my area, 25 and I'll respect that.</p> |
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| <p>1 I was just talking about the 30(b)(6) process. 2 MS. CHAPMAN: Yes. 3 MR. FARRIER: And we're deposing Mr. Crabtree in 4 both his personal capacity and his corporate capacity. 5 I understand and I want to go through the areas of 6 which you have been designated, by the company, to 7 speak on behalf of the company. 8 And I understand those to be -- let's go ahead and 9 mark the deposition notice as Exhibit No. 1. 10 (Thereupon, Defendant's Exhibit No. 1 was marked 11 for identification.) 12 BY MR. FARRIER: 13 Q. I understand that you are the corporate designee 14 within Exhibit No. 1, which is the Notice of Deposition. 15 You've seen that document before, have you not? 16 A. I have. 17 Q. Okay. That you are the designee for number three, 18 number five, number six, along with Mr. Moore for number 19 eight, number nine, and number ten. Is that correct? 20 A. I was on the wrong page. Go through it real quick 21 for me. I was looking at the definitions. I apologize. 22 Go ahead. 23 Q. Number three? 24 A. Okay. Yes. 25 Q. Number five?</p> | <p>1 But I may go back and say, let me ask you what you 2 know of your own personal knowledge of this area. And 3 either you have personal knowledge or you don't, but I'll 4 respect the fact that you are not the designee. But at the 5 same time, you'll need to tell me if we drift into these 6 areas, because sometimes the areas are not so clearly 7 delineated. Is that fair? 8 A. That's fair. 9 Q. Let me start out by talking to you about the early 10 part of at least the chronology in here. And I want to 11 talk about 9/24/2004, and that's the date of the purchase 12 agreement. Are you familiar with that? 13 A. I'm familiar with the purchase agreement. The 14 specific date -- you know, it sounds reasonable. 15 MR. FARRIER: Okay. Let's go ahead and mark as 16 Exhibit No. 2, the binder. 17 (Thereupon, Defendant's Exhibit No. 2 was marked 18 for identification.) 19 BY MR. FARRIER: 20 Q. If you'll look under tab number one in Exhibit 21 No. 2, you'll see the purchase agreement. And if you flip 22 the page, a couple more pages until you get to the -- there 23 you go. You will see that was executed on 9/24. 24 A. Yes. 25 Q. Okay. And the other date that I just want to</p> |

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| <p>1 start out with is if you flip to tab number two in that</p> <p>2 same exhibit, you'll see that the license agreement under</p> <p>3 which MM -- I mean MBII was operating was executed in 1999.</p> <p>4 A. The date on the cover is July 1, 1999. I'm</p> <p>5 looking for the signature page.</p> <p>6 There's no date on the signature page, but it says</p> <p>7 July 1, 1999 on the top page.</p> <p>8 Q. Very good. So what I'd like to do is focus on</p> <p>9 9/24 of 2004 and the knowledge of Westgate at the time that</p> <p>10 it entered into the agreement to purchase. That agreement</p> <p>11 that we just looked at, the purchase agreement, was not the</p> <p>12 closing, but it was an obligation for Westgate to close,</p> <p>13 assuming certain contingencies were met. Correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And as of the date of the execution of that</p> <p>16 document, Westgate knew that it was going to be obligated</p> <p>17 to purchase as long as those contingencies were met that</p> <p>18 were set forth in that agreement. Correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Now, Westgate was only buying property up there.</p> <p>21 It was not buying the franchise agreement. Correct?</p> <p>22 A. Correct. We entered into an agreement to buy the</p> <p>23 property.</p> <p>24 Q. All right. And I want to be specific about the</p> <p>25 second part.</p> | <p>1 prior to entering the 9/24 agreement marked under tab</p> <p>2 number one. Correct?</p> <p>3 A. That is correct.</p> <p>4 Q. That was part of its due diligence before entering</p> <p>5 into this transaction. Right?</p> <p>6 A. That is correct.</p> <p>7 Q. And that would be normal because this is not -- I</p> <p>8 don't mean relative to your other deals, but this is an</p> <p>9 \$18 million transaction. You would do due diligence before</p> <p>10 entering into something like this. Correct?</p> <p>11 A. That is correct.</p> <p>12 Q. So, in reviewing the contractual language of the</p> <p>13 1999 agreement, you knew that under the current existing</p> <p>14 license agreement, that a transfer of the property would</p> <p>15 trigger a termination of the license agreement. Correct?</p> <p>16 A. That is correct.</p> <p>17 Q. All right. And you also knew that Westgate --</p> <p>18 excuse me, that MBII, upon termination, was going to be</p> <p>19 subject to liquidated damages. Correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And in fact, in the 9/24/2004 purchase agreement,</p> <p>22 Westgate agreed to say those liquidated damages. Correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And one of the conditions precedent prior to the</p> <p>25 actual closing on this transaction, on the purchase of the</p> |
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| <p>1 In fact, you had an agreement with MBII that you</p> <p>2 had no expectation that it could transfer the franchise</p> <p>3 agreement or the license agreement. Correct?</p> <p>4 A. We -- we entered into the agreement knowing that</p> <p>5 we were buying the hotel, but we did have -- we were</p> <p>6 hopeful that we'd be able to enter into an agreement with</p> <p>7 Holiday Inn to get a permanent franchise agreement with</p> <p>8 them for a multitude of reasons. But they did not have the</p> <p>9 right to transfer without consent of Holiday Inn.</p> <p>10 Q. That's the specific question I'm asking you. And</p> <p>11 you knew that Westgate knew that at the time that it</p> <p>12 entered the 9/24 agreement. Correct?</p> <p>13 A. That's correct.</p> <p>14 Q. You knew that you would have to deal with my</p> <p>15 client on its own. You'd have to file an application and</p> <p>16 be approved for any franchise agreement. Correct?</p> <p>17 A. That is correct.</p> <p>18 Q. You also knew that Westgate (sic), if it</p> <p>19 transferred the property, in fact, if it went forward with</p> <p>20 this transaction to sell the property to you, that would</p> <p>21 trigger a termination of its license agreement. Correct?</p> <p>22 A. Well, we actually were hopeful to have a transfer,</p> <p>23 but that would have to be approved by Holiday.</p> <p>24 Q. Not my question. My question was, I'll start off</p> <p>25 by saying, Westgate had reviewed the 1999 license agreement</p> | <p>1 property, was that those liquidated damages be escrowed,</p> <p>2 paid in by Westgate, and available to MBII. Correct?</p> <p>3 A. That is correct.</p> <p>4 Q. So as of the execution of that document under tab</p> <p>5 number one in Exhibit No. 2, the liquidated damages was, in</p> <p>6 fact, a sunk cost for Westgate. Correct?</p> <p>7 A. A sunk cost to the purchase of the property, but</p> <p>8 also, we were looking at that as good faith on our part,</p> <p>9 hopeful that we could get an agreement together with</p> <p>10 Intercontinental and retain the Holiday Inn.</p> <p>11 Q. But you would agree with me that it was a sunk</p> <p>12 cost.</p> <p>13 A. Exactly how I just responded is the way my</p> <p>14 response would be again.</p> <p>15 Q. Was it a sunk cost as to the purchase of the</p> <p>16 property?</p> <p>17 A. It was a cost as a purchase of the property, yes.</p> <p>18 Q. Okay. And you never had a deal with the seller</p> <p>19 relative to recovery of that sunk cost, did you?</p> <p>20 A. No.</p> <p>21 Q. And as of the time of the execution of that</p> <p>22 document, you had not spoken subsequently with anyone</p> <p>23 representing my client. Correct?</p> <p>24 A. I had not personally spoken with anyone in the</p> <p>25 organization. When it came to the purchase of the property,</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 Mark Waltrip was more involved at that point in time. 2 It wasn't until after we closed on the property 3 that I took more of the lead. I was in discussions with, 4 you know, considering whether we were going to move forward 5 or not and enter into the contract, but Mark was the leader 6 on the purchase of it. And then once it was signed, that's 7 when I took over as the leadership of it. 8 Q. I want to break that down. You're giving me your 9 personal response, and this is sort of what we were 10 referring to early on. My question really is a corporate 11 question, and if you can't answer it, that's okay. 12 To your knowledge, did Westgate -- and this is 13 designed for you to answer on behalf of Westgate. Did 14 Westgate have any substantive conversations with any 15 representative of my client prior to execution of the 16 document that we've marked under tab one of Exhibit 2? 17 A. Not that I know of in my personal capacity, but I 18 can't respond for the company as a whole because someone 19 else may have. 20 Q. Okay. In fact, part of the agreement between 21 Westgate and MBII was that there would be no discussion 22 between Westgate and my client prior to entering the 23 purchase agreement that's marked as tab one. 24 A. Not that I'm aware of. 25 Q. Okay. That was a long question. Are you saying</p> | <p style="text-align: right;">Page 15</p> <p>1 for us lawyers. I am curious to know whether this sort of 2 deal is typical for Westgate, to use a franchise to create 3 a timeshare opportunity. Is that one business model that's 4 typically used by Westgate? 5 A. It has been used by Westgate. 6 Q. And when you said you were hopeful, you were 7 hopeful to use the Holiday Inn brand to develop this 8 timeshare property. Correct? 9 A. No. We were hopeful to keep the Holiday Inn 10 franchise attached to the unit that we would leave as hotel 11 unit, and not have Holiday Inn be part of the timeshare 12 unit specifically. 13 Q. Okay. But originally, the business plan for this 14 property, prior to executing or I should say upon execution 15 on 9/24/2004, that document, the original idea was that you 16 would use the Holiday Inn brand to assist with marketing 17 the timeshare portion of this project. Correct? 18 A. It's difficult for me to answer that question 19 because I'm not exactly sure I understand it. 20 Q. You don't need to say anymore because I'll try to 21 break it down. 22 A. Please. 23 Q. Anytime you don't -- there's two things I normally 24 tell people that I didn't tell you because you're such an 25 experienced deponent.</p> |
| <p style="text-align: right;">Page 14</p> <p>1 that you're not aware -- 2 A. Not that I'm aware of in my personal capacity, but 3 I can't -- Mark Waltrip is the -- would be the corporate 4 representative related to the purchase and sale agreement. 5 Q. And I asked you a poor question, I think, because 6 I think you're answering the question I asked you before, 7 so I'm going to try it again. 8 In that document that's under tab one, there's a 9 provision whereupon Westgate would not speak to Holiday -- 10 Hospitality prior to the execution of that document. Are 11 you aware of that? 12 A. I don't remember that, but -- I don't remember. 13 Q. That's fair. 14 Westgate was aware that the purchase of the 15 property was on an as is basis. Correct? 16 A. Yes. 17 Q. And you used the word "hopeful" several times in 18 referring to the franchise. Westgate was hopeful that it 19 could negotiate a franchise agreement, but it was never 20 represented to it that it actually would be approved prior 21 to executing that document on 9/24/2004. Correct? 22 A. Correct. 23 Q. You know what, because of the context of this 24 case, it's sort of hard to look at your business, 25 Westgate's business, outside of this one piece of property,</p> | <p style="text-align: right;">Page 16</p> <p>1 Number one, if you want to take a break at any 2 time, this is not an endurance contest. We'll just take a 3 break. I might ask you to go ahead and answer the 4 question. 5 The second thing is, and I don't like to even -- I 6 don't like to blind side even really experienced people. 7 You need to tell me if you don't understand my question 8 because I'm not a mind reader. Even grimaces or confused 9 looks don't necessarily communicate to me that you don't 10 get what I'm asking you. 11 If you want a question rephrased or repeated, if 12 you're day dreaming because this is a boring process to 13 you -- and I don't mean that, but for whatever reason 14 you're distracted and you want a question asked again, tell 15 me and I'll do it. I may ask you the same question, but at 16 least you're alerting me that you didn't understand the 17 question and you need it broken down. 18 The counterpoint to that is if you don't tell me 19 that, I have to rely on the fact that you do understand my 20 question. Is that fair? 21 A. Absolutely. 22 Q. And the point that I always like to make when I 23 say that is we use these depositions later on at trial or 24 other hearings and so on. And one of the reasons it's so 25 important for you to tell me you don't understand the</p> |

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| <p style="text-align: right;">Page 17</p> <p>1 question is if I, or another lawyer, asks you the same 2 question that we've asked you here today -- we spoke in the 3 break here about an automobile accident, which this case is 4 not one. But if you testified here today that the light 5 was red when you were sitting at the intersection, and I 6 asked you the same question or Merritt or some other lawyer 7 asked you the same question two years from now at trial and 8 you say, yeah, the light was green, I don't want the change 9 in your answer to be because you really didn't fully 10 understand the question. Because sometimes people will 11 say, well, I just didn't understand what you were talking 12 about back then. Is that fair? 13 A. That's fair. 14 Q. So back to my question. I want to talk to you 15 about why it was that Westgate was interested in this 16 property, and so let me just start there with the broad 17 question. 18 What about this property intrigued Westgate enough 19 that it wanted to pay \$18 million for it? 20 A. We're interested in the Myrtle Beach market 21 specifically. It was an oceanfront property, had 700-ish 22 feet along the ocean, and we felt it could be a good 23 project for us to turn into and convert into a timeshare. 24 It also had some vacant land that we could do some 25 expansion on. So it fit into our business model.</p> | <p style="text-align: right;">Page 19</p> <p>1 So all of that -- very long answer, but all of 2 those things together went into our, you know, thoughts and 3 our own financial due diligence of whether we would want to 4 move forward with buying this property. 5 Q. And when you move forward with a project like 6 this, does Westgate have a person that would be in charge 7 of looking for new properties and proposing them with an 8 internal committee for consideration? 9 A. Well, at the end of the day, one of the beauties 10 of Westgate is we're a committee of one, and that's David 11 Siegel. But there are two individuals within the company 12 who really were the ones who would go out and look for 13 property. One would be Mark Waltrip, and he was more on 14 the individual property side. And then when it came to 15 buying companies, and occasionally an individual property, 16 it would be me. This was one that Mark Waltrip was heading 17 up. 18 And we would then sit together -- Mark, myself, 19 David, possibly our CFO -- and discuss whether it was a 20 good venture to go forward with or not. 21 Q. Okay. One of the attributes, positive attributes 22 about there being an existing hotel franchise on the 23 property is it does bring foot traffic to which you can 24 market the timeshare idea. Correct? 25 A. That is correct.</p> |
| <p style="text-align: right;">Page 18</p> <p>1 Additionally, we liked the idea of it being a 2 Holiday Inn. We have -- you had asked me a question 3 earlier, and I gave you a very short answer, but I'll give 4 you a bit longer answer now. 5 We've had and have currently a relationship 6 with -- then with Cendant; now it's Wyndham Worldwide -- to 7 have a Ramada Inn on 192 here in Orlando which has a 8 timeshare component to it. It has a Ramada Inn in the back 9 portion, and it has a Ramada Plaza Tower up front. It's 10 500 units. 147 are Ramada Plaza and 353 are Ramada Inn. 11 We negotiated with Ramada to take the 147 Ramada 12 Plaza units, and as we sold them, reduce them from the 13 franchise agreement, and the 353 Ramada Inn units would 14 always stay a Ramada Inn. 15 Knowing that, and knowing that this Holiday Inn 16 has a very good name, it had been on that property for a 17 long time, we saw that as being a benefit also to buying 18 this property, and hopeful that we could enter into an 19 agreement. 20 And I keep using "hopeful" because that is what we 21 were, and we also knew that someone we had done business 22 with before where we had a timeshare in South Florida, in 23 Miami. Sunny Isles, a guy by the name of Dr. Bob Cornfeld; 24 he had a Holiday Inn on his Newport Beach Hotel, and we 25 were selling timeshare there.</p> | <p style="text-align: right;">Page 20</p> <p>1 Q. And you knew at the time that Holiday Inn was the 2 largest hotel chain in the world. Correct? 3 A. That is correct. 4 Q. It's got the largest worldwide reservations center 5 of anyone in the world. Correct? 6 A. Correct. 7 Q. And so for that reason, it would be a good 8 marketing source for the timeshare component of this 9 property. Correct? 10 A. Yes. And the component that it would be very 11 beneficial for is the units that we would leave as a hotel, 12 we made a decision that we would want to keep a flag on or 13 a franchise on. Holiday Inn had a history there. They 14 already had some customer base. Those are very strong 15 things. 16 Myrtle Beach is a market where people seem to like 17 to go to the same place year after year, very consistent. 18 And there was a benefit for filling our hotel rooms, and 19 the individuals who would be in the hotel room or would be 20 staying in the hotel, we would have a booth in the lobby 21 that we would offer to sell tickets to some of the 22 attractions or discounted restaurant vouchers or things 23 like that. And they might, instead of selling them, I may 24 give them something for free to take a 90-minute 25 presentation and see our timeshare unit.</p> |

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| <p style="text-align: right;">Page 21</p> <p>1 So the filling of those rooms through a franchise</p> <p>2 would help me out on marketing the timeshare.</p> <p>3 Q. Okay. And that's one of the reasons you were</p> <p>4 willing to pay the liquidated damages sum, \$1.2 million,</p> <p>5 something like that?</p> <p>6 A. "Ish." 1.2 million-ish and some change, I think.</p> <p>7 Q. I've called it a sunk cost, but it's spent. And</p> <p>8 all you have at that point is a hope that you're going to</p> <p>9 get a long-term franchise. Correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And I want to go back to this idea about how</p> <p>12 properties are identified. Is there -- is there a written</p> <p>13 business plan or proposal or a form that Mr. Siegel uses</p> <p>14 that you put together for a presentation?</p> <p>15 A. There's one-page spreadsheet that we typically put</p> <p>16 together.</p> <p>17 Q. Okay. And underlying that, do you have a business</p> <p>18 plan that you've worked up?</p> <p>19 A. Not really.</p> <p>20 Q. Okay. Do you make an effort to project profits?</p> <p>21 A. Typically.</p> <p>22 Q. And who would do the actual math on that? Would</p> <p>23 you and Mark Waltrip be doing that?</p> <p>24 A. From a very high level we would, and then we would</p> <p>25 have, typically, sometimes, sometimes not, one of our</p> | <p style="text-align: right;">Page 23</p> <p>1 A. That's correct.</p> <p>2 Q. And what that does for you, in part, is it allows</p> <p>3 you to get foot traffic to build out the timeshare piece.</p> <p>4 Is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. All right. And my question for you is, is it fair</p> <p>7 to say that that was at least part of the plan when you</p> <p>8 entered into the decision to purchase this property?</p> <p>9 A. It was part of the plan, but I would not be able</p> <p>10 to sell the whole facility or the units we dedicated for</p> <p>11 timeshare just out of the hotel.</p> <p>12 Q. Fair enough. Now I think we've got common ground.</p> <p>13 A. Yes.</p> <p>14 Q. My question is, as to that part of the plan, just</p> <p>15 relating to my client, Holiday Inn, you, because you had --</p> <p>16 you had two hopes. You hoped to get a long-term deal with</p> <p>17 Holiday Inn and to use that, in part, to facilitate the</p> <p>18 timeshare deal, the timeshare plan. Fair enough?</p> <p>19 A. Fair enough.</p> <p>20 Q. How did that work out for Westgate?</p> <p>21 A. During the peak times of the year, it worked out</p> <p>22 very well. I wish it had generated more business during</p> <p>23 the off season, but I don't think that is as much a Holiday</p> <p>24 Inn issue as it is a Myrtle Beach issue.</p> <p>25 Q. Okay. So the idea in the beginning is that you're</p> |
| <p style="text-align: right;">Page 22</p> <p>1 accountants help us with it.</p> <p>2 Q. Okay.</p> <p>3 A. The distinction would be whether or not we needed</p> <p>4 the support to get a loan from one of our banks.</p> <p>5 Q. Now, at the time that you entered into the</p> <p>6 9/24/2004 purchase agreement, the idea, the hope was to</p> <p>7 obtain a long-term ten-year franchise agreement. Correct?</p> <p>8 A. That is correct.</p> <p>9 Q. During the time that the Holiday Inn franchise</p> <p>10 actually operated on the property out there, did this plan,</p> <p>11 that is, that you could use, you could leverage Holiday Inn</p> <p>12 and its central reservation system to get foot traffic and</p> <p>13 sell timeshares on the property, during the time that you</p> <p>14 had a Holiday Inn flag there, so to speak, did it work?</p> <p>15 A. I don't think I ever said that I had a plan</p> <p>16 exactly the way you just described it. I think a little</p> <p>17 bit of that is maybe you're creating a question out of bits</p> <p>18 and pieces of my answers. So please, if you could, could</p> <p>19 you rephrase the question --</p> <p>20 Q. Sure.</p> <p>21 A. -- more succinctly?</p> <p>22 Q. Yes. Well, I've got to have some building blocks.</p> <p>23 You said earlier that you were interested in the Holiday</p> <p>24 Inn brand because it's the number one hotel in the world,</p> <p>25 largest centralized reservations system. Correct?</p> | <p style="text-align: right;">Page 24</p> <p>1 going to derive revenue from this relationship with Holiday</p> <p>2 Inn. Correct?</p> <p>3 A. I'm going to generate revenue having a franchise</p> <p>4 on the property that would help support the operation.</p> <p>5 That is correct.</p> <p>6 Q. And that, that hope, that part of the business</p> <p>7 plan, turned out to work well -- or I want you to use your</p> <p>8 word; work how during the time that it was in existence?</p> <p>9 A. Well, again, it worked out for us during the peak</p> <p>10 times of the year, but not as well as I wish it would have</p> <p>11 during the off-season.</p> <p>12 Q. Okay, but you certainly got something out of</p> <p>13 having the Holiday Inn flag there. Correct?</p> <p>14 A. Yes. We received reservations through Holiday</p> <p>15 Inn.</p> <p>16 Q. And your long-term goal was to get a ten-year</p> <p>17 franchise agreement. Correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And in fact, you were approved for a ten-year</p> <p>20 franchise agreement. Correct?</p> <p>21 A. I became aware of the fact that we were approved</p> <p>22 for a ten-year franchise agreement within the last</p> <p>23 72 hours. Prior to that, I had no knowledge of that.</p> <p>24 Q. Okay. So the answer to my question would be yes.</p> <p>25 Correct?</p> |

6 (Pages 21 to 24)

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| <p style="text-align: right;">Page 25</p> <p>1 A. Not during the time we had a temporary license. 2 Q. I'll ask my question again. 3 You would agree with me that in June of 2006, you 4 were approved for a ten-year franchise agreement. Correct? 5 A. I did not know that. 6 Q. Not my question. 7 My question is, I mean, you come to this 8 deposition. In a 30(b)(6) deposition, you are designated 9 and you are required to educate yourself and come to an 10 understanding of things. 11 You are going to assimilate the body of knowledge 12 within Westgate on the areas in which you are a designee. 13 Do you understand that? 14 A. A hundred percent. 15 Q. And so as a function of that, you are going to 16 learn things, unless you're omniscient, typically in the 17 process of getting prepared. And I am hearing you say that 18 this is one item that you didn't have firsthand knowledge 19 of at the time, but you now know about it. Correct? 20 A. This is something that my company knew nothing 21 about until the discovery process of this lawsuit. 22 Q. Okay. Now you know of this fact. Correct? 23 A. I don't know if it's a fact because I don't know 24 if it was delivered to me. 25 Q. That's a different question, and I'll ask you</p> | <p style="text-align: right;">Page 27</p> <p>1 Q. Right. It can be used in context against your 2 company as well. Correct? 3 I'll try breaking it down so we're not bickering 4 about it. 5 A. I'm not trying to be -- I am truly not trying to 6 be difficult with you. I don't -- I purposely never try to 7 be difficult in depositions because I'm just trying to 8 answer the questions and give the facts. 9 Q. So I'm going to work backwards this time -- 10 A. Okay. 11 Q. -- and allow you a chance to refine this, but it's 12 important that we cover this question, because I think it's 13 a fair question and I think it's something that somebody 14 would require be answered. 15 Working backwards, as to a June, 2006, approval of 16 a long-term, ten-year franchise agreement, it is Westgate's 17 position that no such approval, if made, was communicated 18 to it. Correct? 19 A. That is correct, until the discovery process of 20 this litigation. 21 Q. It was not communicated contemporaneous. 22 A. Correct. 23 Q. Do you know whether it was communicated to any 24 agent of Westgate? 25 A. Not that I'm aware of.</p> |
| <p style="text-align: right;">Page 26</p> <p>1 about that. 2 But as you sit here today, you're aware that 3 Westgate was approved for a ten-year franchise agreement. 4 Correct? 5 A. I saw, in May of 2010, a letter stating that we 6 were approved for a ten-year franchise agreement and no one 7 in my company saw it ever before that time. 8 Q. Okay. So the answer to my question is yes. 9 Correct? 10 A. With my -- with my caveat, yes. 11 Q. So I'm going to ask you again because we're 12 getting jumbled up with caveats, but you're free to explain 13 your answers. 14 You are aware, sitting here today, that Westgate 15 was, in fact, approved in June of 2006 for a ten-year 16 franchise agreement. Correct? 17 A. I've seen a letter that states that. 18 Q. Are you disagreeing with me? 19 A. I am not. I'm trying to be as honest as possible, 20 but I can't agree that I knew in June of 2006 or July 21 of 2006, and I truly understand what you're trying to get 22 me to answer, and the purpose and the reason why you're 23 trying to get me to answer it. And I'm not going to give 24 that you answer because it can be used out of context 25 against our company.</p> | <p style="text-align: right;">Page 28</p> <p>1 Q. I want to make sure of that. That answer doesn't 2 read well. 3 Do you know, yes or no, whether it was 4 communicated to any agent of Westgate contemporaneously? 5 A. No. 6 Q. Can you disavow that it may have been communicated 7 to Robert Jackson contemporaneously? 8 A. I can't answer for Robert Jackson. 9 Q. You've not sought to determine whether or not it 10 was communicated to Robert Jackson. 11 A. I have not. 12 Q. So when you say affirmatively that it was not 13 communicated to anyone at Westgate, you don't intend to 14 extend that to Westgate's lawyers. 15 A. I was talking about employees of Westgate. 16 Q. Okay. As to the actual approval, and that's where 17 we got sideways, do you have any reason to contest that the 18 approval was actually made in June of 2006 within the walls 19 of my client? 20 A. I have -- I can't -- I don't know what happened in 21 the walls, as you put of it, of your client. 22 Q. So it very well may have gone through the approval 23 process, been formally approved, and not communicated 24 through to Westgate. Correct? 25 A. Correct.</p> |

7 (Pages 25 to 28)

| Page 29 | Page 31 |
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| <p>1 Q. You can't contend one way or the other. 2 A. I cannot. 3 Q. And you're aware of the approval process within my 4 client, generally. 5 A. Very general, on a very general basis, yes. 6 Q. But you became aware that there was a formal 7 review process that met periodically. There was a 8 presentation, and then during that -- and during that 9 process, you were not approved until you were formally 10 approved. Correct? 11 A. I'm aware of that. 12 Q. Okay. And you had dealt with that with temporary 13 licenses. Correct? 14 A. That's correct. 15 Q. Now, all the time that a Holiday Inn franchise 16 operated on that property, it was under a written temporary 17 license. Correct? 18 A. That is correct. 19 Q. And all of those licenses were finite. Correct? 20 A. Correct. 21 Q. They all were going to expire in a short period of 22 time. 23 A. Correct. 24 Q. And I'm using a short period. Some of them were 30 25 days, some of them were 90 days, some were six months.</p> | <p>1 long-term deal? 2 A. I believe we had received notice from Holiday Inn. 3 Q. Okay. You believe it was from Holiday Inn's side 4 and not Westgate's side. 5 A. I do. 6 Q. It was Westgate's hope still, when the plug was 7 pulled, to continue negotiations towards a long-term deal. 8 Correct? 9 A. Correct. 10 Q. Do you know why the plug was pulled? 11 A. I don't know exactly why it was not approved by 12 Holiday Inn. I just know that they elected to not move 13 forward, and then we worked very well together on -- I'm 14 just very crude -- deflagging the property. 15 Q. Let me ask you to turn to a document. Bear with 16 me just a moment. 17 MR. ABNEY: 21. 21 and 22. 18 BY MR. FARRIER: 19 Q. Look at tabs 21 and 22, and take a minute and just 20 familiarize yourself with those. We're going to go off the 21 record for just a second. 22 (A luncheon recess was taken from 12:21 p.m. until 23 1:00 p.m.) 24 BY MR. FARRIER: 25 Q. Let's start talking about the time period of the</p> |
| Page 30 | Page 32 |
| <p>1 Correct? 2 A. I was just going to say the same thing. Yes. It 3 had different time frames, but it was always for a short 4 period of time. Short being less than a year, in my mind. 5 Q. And so, during the entire time that there was a 6 Holiday Inn flag on this property -- is that a fair way to 7 say that? Obviously, I picked up on your word "flag," that 8 you wanted a Holiday Inn flag there. 9 A. That's fine. 10 Q. For the whole time -- and meaning, so if the jury 11 reads this later on, when I say Holiday Inn flag, I am 12 intending to mean that you were actually operating a 13 Holiday Inn hotel on the property. Fair enough? 14 A. That's fair. 15 Q. During the entire time that there was a Holiday 16 Inn flag on the property, Westgate had not been assured of 17 any long-term deal. Correct? 18 A. That is correct. 19 Q. It was always a hope. 20 A. It was definitely a hope, and we were negotiating. 21 And the reason we entered into the monthly extensions on 22 both sides is because we believed we were negotiating in 23 good faith on both sides to hopefully enter into a ten-year 24 agreement. 25 Q. Who pulled the plug on the negotiations over the</p> | <p>1 second half of 2006. 2 A. Okay. 3 Q. June to December of 2006. 4 During this time period, were you the person 5 primarily responsible for Westgate's negotiations with my 6 client? 7 A. Between myself, Richard Moore, and Rob Jackson 8 from our legal side. 9 Q. Okay. I'd like to go through a few documents and 10 talk to you really about this issue of the approval and the 11 context of the approval and any knowledge that you had 12 gleaned about that, sort of taking off from where we were 13 before. 14 Before lunch, we learned from your testimony that 15 Westgate was unaware of any approval that had been made 16 within the walls of my client. Correct? 17 A. That is correct. 18 Q. And I want to talk about the communications going 19 on back and forth between -- between you, Westgate, and my 20 client that is occurring at this time. And the first thing 21 I'd like to look at is under tab 21 of Exhibit No. 2. 22 A. Yes. I am here. 23 Q. And you will see this purports to be an e-mail in 24 which a timeshare addendum is being provided by Charlie 25 Brown -- Broun, excuse me, to Rob Jackson.</p> |

8 (Pages 29 to 32)

| Page 33 | Page 35 |
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| <p>1 Is it Robert or Rob?</p> <p>2 A. Either one is fine.</p> <p>3 Q. Rob is your attorney at the time. Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And you will see the attached addendum. Have you</p> <p>6 ever see these documents before?</p> <p>7 A. I believe I remember seeing them.</p> <p>8 Q. Okay. And that's always sometimes a confusing</p> <p>9 question. Had you seen them prior to your preparation for</p> <p>10 this deposition?</p> <p>11 A. I have not seen them in -- I believe I remember</p> <p>12 seeing them, but the last time I would have seen them would</p> <p>13 have been in mid-2006.</p> <p>14 Q. Okay. Fair enough. That's what I was trying to</p> <p>15 clear up.</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall the negotiations of this addendum?</p> <p>18 A. I remember having conversations about -- I mean,</p> <p>19 it's very -- about this specific document or about all the</p> <p>20 negotiations?</p> <p>21 Q. An addendum.</p> <p>22 A. I remember having conversations with Holiday Inn</p> <p>23 about how would the license work related to timeshare.</p> <p>24 Q. Now, I want to tell you that from my client's</p> <p>25 perspective, the context of what's going on here is an</p> | <p>1 A. That is correct.</p> <p>2 Q. And that's remains a goal of yours. Correct?</p> <p>3 A. That's the whole goal of the relationship with</p> <p>4 Holiday Inn.</p> <p>5 Q. Okay. And was there a sense, in 2006, that we got</p> <p>6 it but for the negotiation out of this timeshare addendum?</p> <p>7 A. We believed that we were in a position that we</p> <p>8 were going to be approved as long as we had an agreement on</p> <p>9 how the timeshare would work in the franchise agreement.</p> <p>10 Q. Okay. So at that point in time, it was a little</p> <p>11 bit stronger than a hope. I'm characterizing it that you</p> <p>12 felt like things were getting close.</p> <p>13 A. Just so I can clarify, when I was talking about</p> <p>14 the hope, that was related to the purchase of the property.</p> <p>15 Once we closed on the property and I had a conversation</p> <p>16 with Cathy Pitchford and Rob -- it was the three of us, I</p> <p>17 remember, because I was in Vegas. And she requested to</p> <p>18 have a deposit put up for the approval process, I guess.</p> <p>19 Q. Is that the application fee?</p> <p>20 A. Yes. Application fee, correct.</p> <p>21 Q. Okay.</p> <p>22 A. At that point, and then as the negotiations went</p> <p>23 on, the hope started becoming more of, you know, we're</p> <p>24 negotiating in good faith, and we believed both sides were,</p> <p>25 that we were going to come to an agreement.</p> |
| Page 34 | Page 36 |
| <p>1 approval had been issued, and I'm not asking you to agree</p> <p>2 with that, but an approval had been issued contingent on</p> <p>3 one thing, and that's negotiation of a timeshare addendum.</p> <p>4 A. Okay.</p> <p>5 Q. That's my client's position.</p> <p>6 Do you have any recollection of an understanding</p> <p>7 in principle being reached short of an actual approval on a</p> <p>8 long-term license deal, contingent on the negotiation out</p> <p>9 of this addendum?</p> <p>10 A. I remember that we were having conversations of</p> <p>11 how we were going to do the addendum and carve or have the</p> <p>12 -- how the timeshare would work with that. I don't</p> <p>13 remember it being that -- I don't know that being attached</p> <p>14 to, hey, this is the approval as long as we have this</p> <p>15 addendum. I don't -- that's your question, I believe, and</p> <p>16 I don't remember that.</p> <p>17 Q. And I want to drill down on that a little bit and</p> <p>18 get away from the word "approval" because we've covered</p> <p>19 approval.</p> <p>20 A. Okay.</p> <p>21 Q. And I understand your position on that.</p> <p>22 What I really want to talk to you about now is</p> <p>23 your mind set as of the last six months of 2006, because</p> <p>24 for the past two years, you've been trying to pull a deal</p> <p>25 together on a long-term franchise agreement. Correct?</p> | <p>1 Q. Okay.</p> <p>2 A. So the hope started going to more that we thought</p> <p>3 an agreement would imminent.</p> <p>4 Q. But your position is at no time did my client ever</p> <p>5 give you assurances or promises that it had been approved</p> <p>6 or would be approved. Is that correct?</p> <p>7 A. I never had assurance that, a hundred percent, it</p> <p>8 was going to be approved. That is correct.</p> <p>9 Q. You were still negotiating.</p> <p>10 A. I believe we were always negotiating. Thinking we</p> <p>11 were getting closer, but always negotiating.</p> <p>12 Q. Okay. So what I want to do is sort of look at</p> <p>13 these documents.</p> <p>14 Do you recall seeing this actual e-mail before</p> <p>15 that's under tab 21?</p> <p>16 A. I don't recall seeing that e-mail.</p> <p>17 Q. Look at tab 22 of Exhibit 2.</p> <p>18 A. Okay.</p> <p>19 Q. This is a document from Elisa Adams to you.</p> <p>20 A. Okay.</p> <p>21 Q. Would you agree that this is an accurate copy of</p> <p>22 an e-mail sent by Elisa to you as of the date and time</p> <p>23 indicated here?</p> <p>24 A. Yeah. I mean it shows me, David, Dave Crabtree</p> <p>25 from Westgate, and it shows it's from Elisa Adams.</p> |

9 (Pages 33 to 36)

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| <p style="text-align: right;">Page 37</p> <p>1 Q. Okay. And so on July 12, 2006, Elisa Adams from 2 IGH, my client, in essence, Holiday Inn, is saying what to 3 you? 4 A. "Our legal counsel would like to resolve the 5 timeshare portion addendum portion prior to issuing the 6 license. He sent the attached document to your counsel 7 yesterday." 8 Q. Okay. If you'll look at that, I'll tell you that 9 it should be the exact same document that's attached under 10 tab number one, the attachment is. 11 A. Okay. 12 Q. This is a proposal from my client as to what the 13 addendum might look like. Do you understand that? 14 A. Correct. 15 Q. And obviously, you were aware that we had made 16 this proposal at the time. Correct? 17 A. Again, I didn't remember seeing that specific 18 e-mail, I don't remember it, but I did remember that Rob 19 and I had talked about the addendum and, you know, how we 20 were going to have the timeshare portion work. 21 Q. Okay. And again, your feeling as of July 12, 2006 22 is that if we can get this addendum worked out, we probably 23 have a deal. 24 A. I believe that we were working -- we were working 25 jointly, Holiday Inn and Westgate, to get to a ten-year</p> | <p style="text-align: right;">Page 39</p> <p>1 thought that my client wanted to close a deal with you just 2 as badly as you may have wanted to close a deal with them. 3 A. I don't know exactly how they felt. But at the 4 point in time we were moving forward, I believed we were 5 both moving forward with the idea of entering into a 6 long-term agreement. 7 Q. Okay. And that was as long as you were 8 negotiating. Correct? 9 A. Correct. 10 Q. Look at the next tab under tab 23. 11 A. Sure. 12 Q. And let me ask you, it's two e-mails, a string of 13 e-mails, and the second e-mail is Elisa Adams writing to 14 you, and then a response from you to her on August 3, 2006. 15 A. Yep. 16 Q. And then the e-mail goes internal, to my client -- 17 A. Yep. 18 Q. -- because we see Tidwell to Adams and then Adams 19 to Charlie Brown. 20 At least as to the portion that you seem to be 21 identified with, would you agree that this is an accurate 22 copy of an exchange of e-mails sent by or from you as of 23 the dates and times indicated? 24 A. I believe so. 25 Q. So now we're in August of 2006, and you're taking</p> |
| <p style="text-align: right;">Page 38</p> <p>1 agreement. 2 Q. And you felt like both sides were working in good 3 faith at this time. 4 A. Yes, I did. 5 Q. And you still feel that way. 6 A. I still feel that at this point in time we were 7 working in good faith. 8 Q. Do you feel like at any time either party was 9 acting in bad faith? 10 A. Once Holiday Inn sent us notice not to renew, I 11 had a feeling -- I had a feeling that I was strung along. 12 I don't know if that means they're acting in bad faith or 13 not. I just think that we were moving forward together, 14 and then it just ceased. 15 So something happened that ended our relationship, 16 and if I would have known it was going to be two and a half 17 years and then it was going to be over, I would not have 18 waited that long. 19 Q. Okay. But you don't have any evidence that you 20 were being strung along, do you? 21 A. Not that I'm aware of. 22 Q. And you don't have any evidence that anyone acted 23 in bad faith, do you? 24 A. Not that I'm aware of. 25 Q. You don't have any evidence to disprove the</p> | <p style="text-align: right;">Page 40</p> <p>1 the addendum, and presumably that's the addendum we just 2 looked at, and you're going to send it over to Rob Jackson. 3 Correct? 4 A. I was going to discuss it with Rob. 5 Q. Okay. And do you recall -- I'm not asking you at 6 this time what was discussed, but do you recall discussing 7 it with Rob Jackson? 8 A. I mean, I remember having a conversation with Rob 9 on it. And I said in my e-mail I was going to have it done 10 Tuesday. If I give them a specific date, I usually live up 11 to my dates. 12 Q. Okay. And if you'll look at the one that you're 13 not copied on, "This is the last response I received." 14 This is dated August 31st. 15 A. Yes. 16 Q. So the month of August has apparently been silent, 17 at least from my client's perspective. And you'll see that 18 it appears, at least, that my client is trying to move 19 forward, towards closure. Correct? 20 A. That's what it appears in these e-mails, yes. 21 Q. Look at the next e-mail. 22 A. Okay. 23 Q. This is an e-mail that you're not copied on, and I 24 assume that you have not seen this document prior to 25 getting prepared for this deposition.</p> |

10 (Pages 37 to 40)

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| <p style="text-align: right;">Page 41</p> <p>1 A. Are you talking about number 24?</p> <p>2 Q. 24, yes. Thank you.</p> <p>3 A. I haven't. I have never seen this one.</p> <p>4 Q. Okay. What I want to ask you about is the</p> <p>5 substance of some statement in here, and you'll see in the</p> <p>6 middle it says -- this is from Robert Jackson. And he</p> <p>7 says, "I was out of the office last week and am out</p> <p>8 Thursday and Friday..." and then it says "David Crabtree</p> <p>9 has been involved with a large securities trial and then</p> <p>10 another matter which both appear to be concluded. I hope</p> <p>11 to meet with him tomorrow or Wednesday."</p> <p>12 And this is in response to Charlie Broun, see</p> <p>13 below, "Robert, what is going on?" We have no signed</p> <p>14 extension and no further contact.</p> <p>15 All right. I've read some to you.</p> <p>16 A. Okay.</p> <p>17 Q. But in the first instance, you would agree with me</p> <p>18 that it appears that my client is continuing to try to push</p> <p>19 closure. Correct?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. And Mr. Jackson provides a response, an excuse for</p> <p>22 the delay, which involves both his schedule and yours. And</p> <p>23 do you recall being involved in a large securities trial</p> <p>24 and otherwise occupied at this time?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 43</p> <p>1 document before.</p> <p>2 A. This is the document that I saw for the first time</p> <p>3 within the last 72 hours.</p> <p>4 Q. And so this is the document that gave you notice</p> <p>5 that my client's position was that we had approved the</p> <p>6 license application.</p> <p>7 A. That's what this stated in this document, yes.</p> <p>8 Q. Did you ask Richard Moore if he had ever seen this</p> <p>9 document?</p> <p>10 A. I did.</p> <p>11 Q. You did?</p> <p>12 A. I did.</p> <p>13 Q. And what did he say?</p> <p>14 A. No.</p> <p>15 Q. Do you have any reason to believe it's a</p> <p>16 contrivance?</p> <p>17 A. Explain.</p> <p>18 Q. Well, my cohort here and I just finished a</p> <p>19 securities trial where the other side had a habit of</p> <p>20 creating letters to themselves from mysterious third</p> <p>21 parties that did not actually exist, signing on behalf of</p> <p>22 John Doe, and mailing the letter to himself to try to</p> <p>23 create facts that did not otherwise exist in a large Ponzi</p> <p>24 scheme.</p> <p>25 A. Okay.</p> |
| <p style="text-align: right;">Page 42</p> <p>1 Q. Okay. And what was that about?</p> <p>2 MS. CHAPMAN: Object. I'm going to object to</p> <p>3 form, but you can answer.</p> <p>4 BY MR. FARRIER:</p> <p>5 Q. Okay. Well, I'll ask it better. Where was that</p> <p>6 case pending?</p> <p>7 A. Here.</p> <p>8 Q. In Orlando?</p> <p>9 A. In Florida.</p> <p>10 Q. In Federal court?</p> <p>11 A. Yeah, but down south.</p> <p>12 Q. All right. And were you managing the case for</p> <p>13 Westgate?</p> <p>14 A. I was a key witness in the case.</p> <p>15 Q. And it took you out of the office for some period</p> <p>16 of time?</p> <p>17 A. Yes.</p> <p>18 Q. All right. When you were out, did you pass the</p> <p>19 baton on this project to anyone else at Westgate?</p> <p>20 A. No.</p> <p>21 Q. Look at the next document that's under tab 25 --</p> <p>22 A. Okay.</p> <p>23 Q. -- of Exhibit No. 2.</p> <p>24 A. Okay.</p> <p>25 Q. And let me first ask if you have seen this</p> | <p style="text-align: right;">Page 44</p> <p>1 Q. That's what we mean by a contrivance. And I'll be</p> <p>2 specific as to this letter.</p> <p>3 Do you have any reason to believe that Elisa Adams</p> <p>4 did not draft this letter and mail it to Richard Moore on</p> <p>5 November 16, 2006?</p> <p>6 A. I have no reason to believe that she did not do</p> <p>7 that. I can only say that Richard Moore never received it.</p> <p>8 And the only reason I'm certain about that is because</p> <p>9 Richard Moore sends me everything he receives when it's</p> <p>10 related to things he and I are working on together, and I</p> <p>11 never saw it.</p> <p>12 Q. Okay. Is the address on this letter accurate?</p> <p>13 A. Yes.</p> <p>14 Q. And it was accurate as of the time?</p> <p>15 A. Yes.</p> <p>16 Q. And to your knowledge, is the Robert Jackson</p> <p>17 address correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Have you asked --</p> <p>20 A. I just want to add, I don't believe she</p> <p>21 maliciously is creating letters --</p> <p>22 Q. Okay.</p> <p>23 A. -- personally.</p> <p>24 MR. LENOX: Can I ask a question? Do you all have</p> <p>25 the courier information on this? It says via overnight</p> |

11 (Pages 41 to 44)

| Page 45 | Page 47 |
|---|---|
| <p>1 courier. Is there some kind of delivery receipt?</p> <p>2 MR. FARRIER: I don't know the answer to that.</p> <p>3 It's a good question.</p> <p>4 THE WITNESS: I'm not sure if the fax number is</p> <p>5 correct. I remember most numbers. Fax numbers are the</p> <p>6 ones I don't remember.</p> <p>7 BY MR. FARRIER:</p> <p>8 Q. They're becoming dinosaurs.</p> <p>9 A. You're correct, because you can scan everything</p> <p>10 and e-mail.</p> <p>11 Q. Let me ask you to flip to the next page.</p> <p>12 A. Okay.</p> <p>13 Q. I meant to ask you a question.</p> <p>14 Have you asked Mr. Jackson whether or not this</p> <p>15 document -- this is a very close question. Have you asked</p> <p>16 Mr. Jackson, have you inquired whether this document exists</p> <p>17 in his file?</p> <p>18 A. When you say this document, are you talking about</p> <p>19 tab 25?</p> <p>20 Q. Yes, 25, this letter dated November 16, 2006.</p> <p>21 A. I have not had a conversation with Rob Jackson</p> <p>22 about this.</p> <p>23 Q. Okay. Let me ask that question in a different</p> <p>24 way. Is there, and I will say this just in advance for</p> <p>25 your benefit, to the extent -- and I don't know, I don't</p> | <p>1 files? Did you ever receive a copy of this letter?</p> <p>2 A. I don't remember seeing this letter.</p> <p>3 Q. Okay. Do you see that you're carbon-copied on</p> <p>4 here along with Richard Moore?</p> <p>5 A. I do.</p> <p>6 Q. And have you made any effort to see if this</p> <p>7 document is contained in your files? I guess not, because</p> <p>8 you hadn't seen it before today, have you?</p> <p>9 A. Correct.</p> <p>10 Q. That you know of.</p> <p>11 A. This, right now, this letter I haven't seen in any</p> <p>12 time. You know, I told you I saw tab 25 in the last</p> <p>13 72 hours.</p> <p>14 Q. Right.</p> <p>15 A. Tab 26, I don't remember ever seeing.</p> <p>16 Q. Okay. Flip over to the next page, next tab,</p> <p>17 excuse me, which is tab 27.</p> <p>18 A. Okay.</p> <p>19 Q. Now, if you look at the bottom of this e-mail,</p> <p>20 there is -- there is an e-mail from Robert Jackson to Elisa</p> <p>21 Adams, with a cc to Dave Crabtree and to Richard Moore,</p> <p>22 apparently. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. To the best of your knowledge, is this a true and</p> <p>25 accurate copy of an e-mail, at least this bottom portion,</p> |
| Page 46 | Page 48 |
| <p>1 think this breaches the attorney/client privilege, but to</p> <p>2 the extent it does by your answering it, I do not intend it</p> <p>3 to be a waiver, because I think it's a question of fact</p> <p>4 whether a document exists, whether it reached a file.</p> <p>5 But have you made inquiry of Greenspoon Marder as</p> <p>6 to whether or not this precise letter which is under tab 25</p> <p>7 exists in their files?</p> <p>8 A. I have only asked Richard Moore about this letter.</p> <p>9 Q. Okay. Look at tab 26.</p> <p>10 A. Okay.</p> <p>11 Q. After having looked at this letter dated</p> <p>12 November 21, 2006 from Mr. Jackson to Elisa Adams which is</p> <p>13 found under tab 26 of Exhibit No. 2, can you confirm</p> <p>14 whether or not you have seen this document before today?</p> <p>15 A. I don't remember seeing this document.</p> <p>16 Q. Okay. Now this, tab 25, appears to refer to --</p> <p>17 excuse me. Tab 26 appears to refer back to the</p> <p>18 November 16th letter on tab 25. Correct?</p> <p>19 A. Correct.</p> <p>20 Q. I mean, we can't say that for sure, but</p> <p>21 contextually, it seems to be a direct reference to the</p> <p>22 November 16th letter under tab 25 because of his reference</p> <p>23 back to the termination. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. So did you receive a copy of this letter in your</p> | <p>1 that was forwarded to you on or about the date indicated?</p> <p>2 A. It would appear that way.</p> <p>3 Q. Okay. And it, too, it's sent on November 21, 2006</p> <p>4 at 6:28 p.m. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. And it says please see attached letter.</p> <p>7 Now, I don't really understand the c.c. to David</p> <p>8 Crabtree and Elisa Adams down at the bottom. That's just</p> <p>9 an unusual placement within an e-mail.</p> <p>10 A. I agree.</p> <p>11 Q. Do you know anything about this e-mail?</p> <p>12 A. Not that I remember right now.</p> <p>13 Q. Can you recall what was attached to it on</p> <p>14 November 21, 2006?</p> <p>15 A. I have no idea what was attached to it.</p> <p>16 Q. And some of these questions, I don't expect you --</p> <p>17 I mean, I have to ask you, but I don't expect you to have a</p> <p>18 photographic memory.</p> <p>19 A. I understand.</p> <p>20 Q. You would agree with me that it is possible that</p> <p>21 it could have been the letter under tab 25. Correct?</p> <p>22 A. I don't know if it could have been what's under</p> <p>23 25. I don't know if it could have been the addendum for</p> <p>24 the franchise agreement. I'd be speculating. I have no</p> <p>25 idea what was attached.</p> |

12 (Pages 45 to 48)

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| <p style="text-align: right;">Page 49</p> <p>1 Q. Well, I like to ask these questions both ways. 2 You don't know what was attached, but you also can't 3 contend that it was something other than something else. 4 It could have been that November 16th letter in tab 25; it 5 could have been something else. You just have no 6 recollection. Correct? 7 A. That's correct. 8 Q. In other words, you can't refute that it might 9 have been the November 16, 2006, letter under tab 25. 10 A. I can't tell you if it -- I can't say what it was 11 or what it was not. 12 Q. Okay. Well, at the top here, it says attached is 13 a fully executed extension letter; the e-mail from Robert 14 Jackson back to Charlie Brown -- Broun. 15 A. That's funny. Please, can we go off the record 16 for a second? 17 MR. FARRIER: Yes. 18 (Discussion off the record.) 19 BY MR. FARRIER: 20 Q. We're under tab 27, and you will see there is a 21 red line version of an addendum in here. 22 A. Okay. 23 Q. Did you ever review a red line that was created by 24 Mr. Jackson and proposed back to Westgate -- proposed back 25 to my client by Westgate?</p> | <p style="text-align: right;">Page 51</p> <p>1 me that these underlined portions appear to be changes 2 suggested by Westgate through its attorney to my client. 3 Correct? 4 A. Correct. 5 Q. So this would be new language that -- it appears 6 it's new language proposed by Mr. Jackson. Correct? 7 A. Proposed by Westgate through Rob. 8 Q. Okay. And you will see that under paragraph number 9 three on 1075 there is a proposal that there is going to be 10 established a in-house call program. 11 A. Yes. 12 Q. And flip over to 1080. That's a long paragraph, 13 so if you need some time to look at it, Westgate is also 14 now proposing in this draft a cure requirement for any 15 default that occurs under the license agreement, or at 16 least the addendum. 17 A. Okay. 18 Q. Would you agree with me that these changes would 19 be substantive changes to a long-term franchise agreement, 20 that are being proposed? 21 A. I would agree they are changes that we would want, 22 but I wouldn't draw a line in the sand over any of them, 23 meaning they weren't deal breakers from Westgate's 24 perspective. 25 Q. Okay. After looking at this string of exhibits,</p> |
| <p style="text-align: right;">Page 50</p> <p>1 A. Any red line that Rob would have done, I would 2 have been involved in from the company's perspective. 3 Q. This is a difficult thing to do live, and we may 4 wait and just take a break, but can you flip through this 5 and see if it's something you've seen before? It's very 6 hard to do because it's an evolving negotiation, I know. 7 Actually, I think the easiest way for me to do 8 this is I am going to point you to some pages of it by the 9 Bates labels. And you're familiar with Bates labels. 10 Right? 11 A. Yes, I am. 12 Q. If you will go over to 1070, under Paragraph 6. 13 A. Yes. 14 Q. You will see language that removes from the 15 license and fee, any units that are devoted to the 16 timeshare. 17 A. Correct. 18 Q. Okay. And if you look on the next page, 1071, at 19 the bottom of the page, the carry over paragraph. 20 A. Yes. 21 Q. You will see that there is a two-year opt out, a 22 unilateral termination provision on behalf of your client. 23 Do you see that? 24 A. Yes. 25 Q. And if you flip over to 1075, you would agree with</p> | <p style="text-align: right;">Page 52</p> <p>1 is it possible that there was a complete misunderstanding 2 between Westgate and my client about where we were in 3 negotiations? 4 A. It's hard for me to say where they were. I don't 5 think there was a misunderstanding from our perspective. 6 The way I recall it, we were signing extensions because we 7 believed we were getting to an end, and the end being 8 signing a ten-year deal. 9 Q. Okay. 10 A. So I don't know if there was a misunderstanding on 11 that front. 12 Q. All right. Let me ask that question in a slightly 13 different way, and you may have seen this from pleadings or 14 you may have gleaned it from my questioning. 15 Do you understand that my client's position is 16 that they worked for two years to try to come to an 17 agreement on a ten-year franchise agreement, and 18 ultimately, in June of 2006, they approved your 19 application. Do you understand that that's our position? 20 A. I understand that's your position, yes. 21 Q. And do you understand that the last item, at least 22 in my client's mind, was the negotiation of this agreement, 23 and that is the addendum. Do you understand that? 24 A. From what you have shown me from the letter and 25 the internal e-mails, yes, I do understand that.</p> |

13 (Pages 49 to 52)

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| <p style="text-align: right;">Page 53</p> <p>1 Q. And that, in fact, any lagging, at least by 2 looking at these documents that was occurring during this 3 period of time, the second half of 2006, appears to have 4 been on the part of Westgate rather than by my client. 5 Correct? 6 A. It looked like we had some things that slowed down 7 the process, yes. 8 Q. So you would agree with me. Correct? 9 A. I agree with you. 10 Q. And you would agree with me that these series of 11 exhibits that I have shown from you tab 21 through tab 27 12 are supportive of our position in the case. Correct? 13 MS. CHAPMAN: Object to form. You can answer, if 14 you can. 15 THE WITNESS: If you want to be a little clearer 16 on it, you'll make it so it's easier for me to answer. 17 MR. FARRIER: I was waiting for an objection to 18 occur, because there's an objection speech I always 19 like to make to people. 20 THE WITNESS: Okay. 21 MR. FARRIER: In federal court, the role of 22 attorney is very limited, and I said this early on. 23 And so when your attorney makes an objection, she's 24 doing it for one person's benefit, and it's mine. 25 She's trying to help me out.</p> | <p style="text-align: right;">Page 55</p> <p>1 MS. CHAPMAN: Object to form. 2 THE WITNESS: You are putting things in front of 3 me that look -- that appear to support your client's 4 position. 5 BY MR. FARRIER: 6 Q. Absolutely. That's my job. 7 And you would agree with me that if, in fact, in 8 June of 2006 that Westgate had been approved for a ten-year 9 license agreement, that the allegations in this case would 10 take on an entirely different flavor. Correct? 11 MS. CHAPMAN: Object to form. 12 MR. LENOX: What flavor, chocolate? 13 THE WITNESS: If in June of 2006, I knew that we 14 already had an approval and it was limited to ironing 15 out the fine details of the addendum, we would have 16 made sure we ironed them out then and we would still 17 have a Holiday Inn franchise flag on that property. 18 BY MR. FARRIER: 19 Q. And if, in fact, that was approved and 20 communicated in some way, either directly to Westgate or 21 through your agent, then you agree with me that at least as 22 of that time, that Holiday Inn, my client, Holiday 23 Hospitality, had done all it could do to reach an agreement 24 with you. Correct? 25 MS. CHAPMAN: Object to form.</p> |
| <p style="text-align: right;">Page 54</p> <p>1 And I may agree or disagree with her, but unless 2 you are given an instruction by your lawyer not to 3 answer a question, she really is sort of a potted 4 plant. I don't mean to be disparaging at all. 5 MS. CHAPMAN: Thank you. 6 MR. FARRIER: But she needs to note her objection 7 for the record. I need to listen to it and consider 8 it, and either modify my question or reject it. But 9 unless she says don't answer that, then we're just 10 rocking along, assuming I don't want to rephrase my 11 question. 12 So I will rephrase my question, since I went off 13 on a little speech, and we'll keep rocking along. 14 BY MR. FARRIER: 15 Q. You just looked at a number of exhibits from tab 16 21 through tab 27, I believe, and you gained an 17 understanding, which you may have had before coming in here 18 of what my client's version of history was regarding these 19 negotiations. Right? 20 A. Correct. 21 Q. You would agree with me that these documents we 22 just looked at don't contradict in any way the version of 23 history that my client asserts in this case. Correct? 24 A. Correct. 25 Q. In fact, they support it. Correct?</p> | <p style="text-align: right;">Page 56</p> <p>1 THE WITNESS: One thing I meant to say earlier, 2 and I'm not trying to go off on a tangent, but I think 3 it's a key point to bring up right now, is part of the 4 negotiation and us getting to an addendum and a 5 ten-year agreement, is I was going to negotiate fees, 6 royalty fees, marketing fees -- we'll just call them 7 franchise fees -- to encompass all the fees that I 8 would pay as a franchisee to a point where it would 9 allow me to recoup my liquidated damage. 10 I'm just throwing that out there, because that was 11 probably going to be the last thing that was left on 12 the table to have ironed out. I definitely would have 13 been in a position at the table trying to finalize 14 those things to ensure -- to ensure that I was able to 15 recoup money that, in my perspective, I paid twice. 16 BY MR. FARRIER: 17 Q. Look under tab 27, 1090. 18 A. Okay. 19 Q. And you will see that, in fact, not in any obtuse 20 way, but in a very direct way you've made a proposal to 21 recoup those fees, if you look at the very bottom of the 22 page under Paragraph 21. 23 A. I'm very consistent in the way I negotiate. 24 Q. So my point is that I need to understand more 25 about what this case is about, if in fact the facts in my</p> |

14 (Pages 53 to 56)

| Page 57 | Page 59 |
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| <p>1 client's version are indeed accurate. I need to understand 2 what the case is about, if your version is accurate and if 3 my version is accurate. 4 And I'll start out by talking about your version. 5 And when I say your version, I'm dumbing down a lot of 6 testimony that you've already talked about, but your 7 version is that you were negotiating along, and no one ever 8 -- if an approval took place, no one ever told you about 9 it. That's your version of the facts. Okay? Is that 10 fair? 11 A. On a limited scope, yes. 12 Q. Okay. I mean, I left out an awful lot, obviously. 13 But if that version of facts is absolutely rock 14 solid, this June letter did not go out, approval didn't -- 15 it wasn't understood. If any approval was never 16 communicated, what did my client do to cause any damage to 17 your client? 18 A. You mean to me? 19 Q. To Westgate. 20 A. I know. You said my client. I am the client. 21 Q. I'm going to ask that question again. 22 What did my client do to you, yes, you, Westgate? 23 A. The liquidated damage was an amount that was a 24 calculation to terminate the MBII franchise agreement. And 25 it was a calculation of the fees they would have received</p> | <p>1 earlier what our relationship was and how it worked. And I 2 could have started building momentum for the property that 3 the new identity was a Ramada Inn or something like that. 4 So again, for that two and a half years, I lost 5 the promotion and the opportunity to build a brand other 6 than the Holiday Inn. 7 And you know, I also believed that I was going to 8 be able to negotiate a fee to recoup the money that I paid 9 twice. I'm just saying from a business standpoint, I'm not 10 practicing any law in my comments whatsoever, but from a 11 business standpoint, I was hopeful to get a reduction in 12 the franchise fees, or as you pointed out in the addendum, 13 repayment of the double payments that I believe I made. 14 Q. Okay. 15 A. Very long-winded answer. I hope it covered your 16 -- answered your question. 17 Q. If didn't at all. In fact, I'm going to tell you 18 where the disconnect is. 19 A. Okay. 20 Q. I asked you, I think, so I'm going to ask it 21 again. What I intended to ask you is what my client did, 22 and you answered with what you would have done had you 23 known how history was going to play out. 24 And so, I want to ask you again, what is it that 25 my client did to cause you damage?</p> |
| Page 58 | Page 60 |
| <p>1 from the day of termination until the end of the term, in 2 concept. I can't remember off the top of my head the 3 specifics, but in concept. 4 So this \$1.2 million-ish that they were never 5 going to see because we terminated the agreement, we paid 6 upon closing and purchasing the property. 7 Subsequent to that, we ended up entering into a 8 temporary license agreement with your client. I paid those 9 fees all over again. 10 Where's the damage to me? For two and a half 11 years, when I was paying the fee for the second time, I had 12 a couple of different options, if at the end -- if the 13 finish line was I wasn't going to enter into an agreement 14 with Holiday Inn. I could have had it be an independent 15 flag and I start to build momentum that it's not the 16 Holiday Inn property of Myrtle Beach, it's the Westgate 17 Resorts property or Westgate Inn or whatever internal 18 independent quasi-flag we use. 19 So for two and a half years, the public did not 20 know about a property called Westgate, except very limited 21 to the timeshare portion of it. The 84 units, I believe it 22 is, out of the 300-ish units. That's one. 23 The second thing is I could have entered into an 24 agreement with a different flag. I already had a 25 relationship with Cendant through Ramada, who I explained</p> | <p>1 A. I believe they didn't enter into a ten-year 2 agreement with me, and it cost me time. 3 Q. Okay. I know that's what happened, and I agree 4 with you; that it is conceded that they didn't enter into a 5 ten-year agreement. It's disputed whether or not it was 6 approved, but that's a matter of fact. It's also a matter 7 of fact that time passed while that occurred. 8 But is there anything that my client did that was 9 untoward or unfair or improper during any of this period 10 that led to those two facts? 11 A. I feel that I paid fees for the same period of 12 time twice. 13 Q. Is there anything my client did, though? 14 A. Besides receive the money? No. 15 Q. And in receiving the money, you're talking about 16 the fees that were paid in the interim and the liquidated 17 damages. Correct? 18 A. I'm talking about the liquidated damage to cover 19 that time period and then the temporary license fees. That 20 was a separate contract. 21 Q. So let's break that down. For the liquidated 22 damages, that's the reason I asked you about sunk costs. 23 You may have hoped to get it back in some form down the 24 road, but there's nothing that my client did to create that 25 hope in your mind that you might get it back in some</p> |

15 (Pages 57 to 60)

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| <p style="text-align: right;">Page 61</p> <p>1 fashion. Correct?</p> <p>2 MS. CHAPMAN: Object to form.</p> <p>3 THE WITNESS: I believe that part of our</p> <p>4 negotiating in good faith on both sides was I was going</p> <p>5 to get to a point where I could negotiate it, but there</p> <p>6 was nothing implied or agreed to by your client at any</p> <p>7 point in time.</p> <p>8 BY MR. FARRIER:</p> <p>9 Q. Okay. That's what I'm -- that's what I'm trying</p> <p>10 to establish.</p> <p>11 On 9/24/2004, a decision is made by you to sink</p> <p>12 liquidated damages into this investment, and that money was</p> <p>13 spent not in reliance on anything my client did or didn't</p> <p>14 do, but as part of a hoped-for package that you were going</p> <p>15 to pull together. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. All right. And the fees that were paid in the</p> <p>18 interim from 2004, 2005 on through 2006, whenever the</p> <p>19 relationship ended, my client provided the services it said</p> <p>20 it was going to provide in exchange for those fees.</p> <p>21 Correct?</p> <p>22 A. It was from January of 2005 through May -- end of</p> <p>23 May, 2007.</p> <p>24 Q. Okay.</p> <p>25 A. Those are the dates you're asking about. Correct?</p> | <p style="text-align: right;">Page 63</p> <p>1 paying fees, we did. Correct?</p> <p>2 MS. CHAPMAN: Object to form.</p> <p>3 THE WITNESS: You were delivering me the</p> <p>4 reservation system called for and I was paying the</p> <p>5 fees. That's correct.</p> <p>6 BY MR. FARRIER:</p> <p>7 Q. Okay. Another way to say that, you're not aware of</p> <p>8 any substantive breach of any agreement entered into</p> <p>9 actually signed and executed between my client and you.</p> <p>10 Correct?</p> <p>11 A. Not that I'm aware of during that period of time.</p> <p>12 Q. Okay. Look at paragraph -- tab 26.</p> <p>13 A. Okay.</p> <p>14 Q. And there's a curious line in here, right in the</p> <p>15 middle, with the sentence "Please understand that we have</p> <p>16 been addressing internal development issues that have made</p> <p>17 it difficult to finalize said Addendum. Fortunately, these</p> <p>18 issues have been resolved and we are hopeful that we will</p> <p>19 be able to finalize a long-term License which will enable</p> <p>20 us to continue our relationship."</p> <p>21 I guess the first question is, were there internal</p> <p>22 development issues occurring within Westgate in the latter</p> <p>23 part of 2006?</p> <p>24 A. Great question to ask Mark Waltrip.</p> <p>25 Q. Okay.</p> |
| <p style="text-align: right;">Page 62</p> <p>1 Q. Yes.</p> <p>2 A. They -- they provided the reservation system and</p> <p>3 reservations during that period of time that the temporary</p> <p>4 license called for.</p> <p>5 Q. Okay. So let me ask that another way. All the</p> <p>6 while on these temporary periods, an agreement is entered</p> <p>7 into on the front end, sometimes to cover a little bit of a</p> <p>8 gap, but an agreement is entered into between my client and</p> <p>9 you whereby my client is agreeing to do certain things to</p> <p>10 keep you in the Holidex reservation system, and there's a</p> <p>11 list of them in those temporary licenses. And my client</p> <p>12 did those; whatever is in the license, they did those</p> <p>13 things that were in the license. Correct?</p> <p>14 A. Correct. The only thing I want to add is the</p> <p>15 reason I kept agreeing to the extensions was with the fact,</p> <p>16 the point that we were going to come to an agreement at the</p> <p>17 end. Because at the same time, every time I extended, I</p> <p>18 lost the ability to have a different identity for that</p> <p>19 property than Holiday Inn.</p> <p>20 Q. Right. There may be some very small thing out</p> <p>21 there that I don't know about and I'm not trying to capture</p> <p>22 it in a question like we may have owed you a set of Holiday</p> <p>23 Inn napkins that were late being delivered, but by and</p> <p>24 large, whatever it was that Holiday Inn was supposed to do,</p> <p>25 my client was supposed to do for you for which you were</p> | <p style="text-align: right;">Page 64</p> <p>1 A. Development here, the way I would understand it,</p> <p>2 would be us trying to expand the building.</p> <p>3 Q. That's not the inference I took from this, but I</p> <p>4 don't argue about inference. I'm going to ask you about my</p> <p>5 inference. The inference that I took was that there was a</p> <p>6 problem internal to the organization at Westgate that was</p> <p>7 going on, a change in leadership, a struggle for control</p> <p>8 between you and Mark or something. I mean, something --</p> <p>9 I'm being a little bit light, but something going on</p> <p>10 internal to Westgate at this time, not specific to the</p> <p>11 project, but within the business.</p> <p>12 Are you aware of anything that was going on at</p> <p>13 this time?</p> <p>14 A. From the development standpoint, from the outside</p> <p>15 looking in, it was the property development of the</p> <p>16 expansion.</p> <p>17 Q. Okay.</p> <p>18 A. There was some issue -- I don't even want to</p> <p>19 speculate what the issues are, although I will tell you two</p> <p>20 things. One was the height of the building, and there are</p> <p>21 some setback issues.</p> <p>22 Q. Okay.</p> <p>23 A. That's what I believe that's referencing.</p> <p>24 Q. And what you're saying -- we're still missing each</p> <p>25 other a little bit. What you're saying is all these issues</p> |

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| Page 65 | Page 67 |
|---|--|
| <p>1 were specific to the property at Myrtle Beach. Correct?</p> <p>2 A. Correct.</p> <p>3 Q. You're not aware of any issues, systemic issues,</p> <p>4 structural issues within Westgate that went beyond this</p> <p>5 project that were going on at the time.</p> <p>6 A. November, 2006, there was -- we were cruising</p> <p>7 along. David Siegel owns the company. He runs the</p> <p>8 company. There were no development -- internal executive</p> <p>9 development issues going on at Westgate.</p> <p>10 Q. Okay. If I understand, then, your overall</p> <p>11 complaint, I'm going to use an analogy, and I don't mean --</p> <p>12 this is not intended to be trite, but -- and I want to be</p> <p>13 realistic, so if it doesn't fit, you tell me.</p> <p>14 But what I hear you saying is that your real</p> <p>15 problem with what happened here is that you spent a lot</p> <p>16 time on something that you could have used better either</p> <p>17 developing the property yourself or going with another flag</p> <p>18 to go on this property. Correct?</p> <p>19 A. Yeah, yes.</p> <p>20 Q. All right. And to me what I hear is, to use a</p> <p>21 dating analogy, it's to look back and say I just wasted the</p> <p>22 last three years of my life with you when I should have</p> <p>23 been and would have been -- my time would have been better</p> <p>24 spent seeing somebody else. Is that a fair analogy of what</p> <p>25 really went on here?</p> | <p>1 extension, send it over to me. I would find out where we</p> <p>2 were in the process, and then get Siegel to sign it.</p> <p>3 Q. And really what I'm trying to make sure of is that</p> <p>4 both sides needed extensions at various times during this</p> <p>5 process. Correct?</p> <p>6 A. Correct.</p> <p>7 Q. All the extensions would have come from -- the</p> <p>8 actual agreement would have been drafted by my client.</p> <p>9 Correct?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. The ones that were executed.</p> <p>12 A. Yes.</p> <p>13 Q. Do you know what happened to the negotiations</p> <p>14 after December of 2006?</p> <p>15 A. After the red line that you just -- I guess that's</p> <p>16 tab 27 --</p> <p>17 Q. Right.</p> <p>18 A. -- if I'm accurate.</p> <p>19 Q. Right.</p> <p>20 A. I'm not sure what happened after December -- I</p> <p>21 mean, I don't remember what happened after December 5th,</p> <p>22 which is the date that you show on this, to -- you know,</p> <p>23 after that.</p> <p>24 Q. Okay. You know, when we began this this morning,</p> <p>25 you shared with me your impression that the person who</p> |
| Page 66 | Page 68 |
| <p>1 A. The only thing that's not fair is I wouldn't enter</p> <p>2 into a contract with someone I'm dating. I would prefer to</p> <p>3 wait until before we got married, and that's when you ask</p> <p>4 them for the contract.</p> <p>5 MR. FARRIER: Let's take a break.</p> <p>6 (Brief recess.)</p> <p>7 BY MR. FARRIER:</p> <p>8 Q. So let's return to tab 26. There was one other</p> <p>9 question I neglected to ask you about that.</p> <p>10 A. Okay.</p> <p>11 Q. If you look at the last line, the inference I draw</p> <p>12 is Mr. Jackson is asking for an extension of my client. Is</p> <p>13 that a fair inference?</p> <p>14 A. Yes.</p> <p>15 Q. And I just wanted to see if I was correct in my</p> <p>16 understanding that both sides proposed extensions at</p> <p>17 various times to proceed with negotiations. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. So there were times when the extensions were</p> <p>20 actually at the behest of you versus my client. Correct?</p> <p>21 A. The only thing is I don't know the conversation</p> <p>22 that was occurring, you know, alongside this letter. So I</p> <p>23 don't know if it was a proposal and Rob had called me and</p> <p>24 said, hey, do we want to do it?</p> <p>25 Typically, Richard Moore would get a copy of an</p> | <p>1 walked away from the table -- and it's not the language you</p> <p>2 used -- was my client. Is that still your understanding?</p> <p>3 A. My belief is that for two and a half years we were</p> <p>4 negotiating this, and then you or -- you, as being Holiday</p> <p>5 Inn, terminated going forward.</p> <p>6 Q. Okay. Do you know what happened with the</p> <p>7 proposals as contained in tab 27, the red line?</p> <p>8 A. The proposed changes?</p> <p>9 Q. Yes.</p> <p>10 A. I don't ever remember sitting down with Holiday</p> <p>11 Inn and going through them one by one or having a phone</p> <p>12 call where I went through them one by one with anyone on</p> <p>13 the business side of Holiday Inn, so I'm not exactly sure</p> <p>14 what happened in response to the red line suggestions.</p> <p>15 Q. And what I'm trying to get to, to sort of get to</p> <p>16 the end of the line is, you don't know what happened after</p> <p>17 this proposal, whether there were additional proposals or</p> <p>18 additional discussions over these proposed changes.</p> <p>19 A. I don't remember sitting here right now. It</p> <p>20 doesn't mean that if you didn't show me that there was</p> <p>21 another proposal, it couldn't jar my memory, but sitting</p> <p>22 here now, I don't remember.</p> <p>23 Q. Okay. Just so we're clear, I'm not ready to pull</p> <p>24 the next document out of my hat. This is the last document</p> <p>25 that I have that evidences any negotiations, but that</p> |

17 (Pages 65 to 68)

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| <p style="text-align: right;">Page 69</p> <p>1 doesn't mean it's the end of line of negotiations. I was 2 just curious if you knew one way or the other, and you said 3 you don't. 4 A. Sitting here right now, I don't remember. 5 Q. Okay. Post termination, what happened at the 6 property? 7 A. Once we terminated -- we terminated, I think, the 8 end of May. I think it was May 31st, and then we had until 9 like the last week of June to take everything off of the 10 property that was -- that had Holiday Inn, you know, 11 trademarks or name or anything on it. And then after that, 12 we went at it as an independent. 13 Q. Okay. Now, let me see if I understand sort of 14 what happened on the property, which I need to go to 15 because I haven't been there. 16 But originally, there was a large piece of 17 property and the original idea was that you were to take 18 out portions of the Holiday Inn hotel, floor by floor, and 19 market those as timeshares. Correct? 20 A. Not quite that way, but let me clarify. 21 Q. Uh-huh. 22 A. The property had 305-ish rooms. Some people say 23 306, some people said 304, so let's just say 305. Of that, 24 it was made up of three buildings. The third building -- 25 while all connected by hallway and other things, there were</p> | <p style="text-align: right;">Page 71</p> <p>1 Q. Okay. 2 A. I'm not exactly sure what day we broke ground, and 3 I hate to say it, but I don't even remember what day we 4 opened. 5 Q. You're operating this as a Westgate facility now. 6 A. Correct. 7 Q. And it still has a hotel portion? 8 A. Those first two buildings that I said, the 200 -- 9 let's call it, let's say 305 less the 84, 221 units, I 10 guess, are still operated as a hotel. 11 Q. Okay. Is any portion of it -- I'm going to use a 12 sloppy term -- a condotel? Did you ever market portions of 13 this as hotel rooms that would be owned in a horizontal 14 property owner scheme? 15 A. We were going to build -- we sold whole ownership 16 condominium units in the building that we -- the first 17 phase of the expansion that we did, yes. A portion of it 18 we're selling as timeshare, and there were some units that 19 we sold as whole ownership. 20 When you say condotel, it's a legal term. I'm not 21 exactly sure how Michael -- how Greenspoon Marder created 22 it within South Carolina. 23 Q. Understood. Help me to understand numbers and how 24 you track numbers for timeshares. 25 If you sell a unit, if I start asking you</p> |
| <p style="text-align: right;">Page 70</p> <p>1 three buildings because the thing was built in a couple of 2 phases. 3 The third building had 84 units of the 305-ish 4 units, and we converted those 84 units into 28 two-bedroom 5 lock-off timeshare units, which was made up of 56 keys; 28 6 times two. 7 So the concept or the thought was we would enter 8 into the long-term franchise or flag with Holiday Inn on 9 the first two buildings, and the third one we would 10 build -- we would convert as timeshare, which we did. 11 Additionally, we were going to expand the property 12 because we had the space, land, and then we had to figure 13 out what we were going to do with parking. That was one of 14 our developmental issues. 15 So I think I answered your question. 16 Q. You did. So, did you ever build what I'm going to 17 call the new tower? 18 A. We've built a portion of it. We have -- I'm 19 sorry. We have completed the first phase of the expansion, 20 and there is still more that we can build. The climate and 21 market is not right to be doing that. 22 Q. And when did you begin construction on the 23 expansion and when did you get a CO on the first phase, as 24 best you can recall? 25 A. I would -- great question for Mark.</p> | <p style="text-align: right;">Page 72</p> <p>1 questions about how many were sold, it could be Room 337 2 that you're referring to, but there's also 52 weeks that 3 you could be selling on Room 337. And I get confused when 4 I talk to people about timeshares, whether you're talking 5 about weeks or days or you refer to it by rooms. And when 6 you market them, I guess you can't market the whole year's 7 worth, because you're selling individuals blocks. 8 That's an awful question, I admit, but how do you 9 speak of the timeshare units and their sales? 10 A. Intervals. 11 Q. Okay. 12 A. Timeshare interval. And an interval could be a 13 whole week. What that means is you get -- you're deeded 14 every year, or it could be what we call a half-week or a 15 biannual week, which is you buy every even year in a unit 16 or you buy every odd year in a unit. Now, the deed -- the 17 deed to a unit is for deeding purposes, for us to be able 18 to put a mortgage on that, because we finance most of the 19 purchases through our company. 20 But as far as the use side, the units, they all 21 float within a season together. So there's a high season, 22 that if you buy a week during the high season, and I don't 23 have the float use plan in front of me, but let's just say 24 it's 12 weeks in the peak time; that you can come one week 25 within those 12 weeks for that specific unit type that you</p> |

18 (Pages 69 to 72)

| Page 73 | Page 75 |
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| <p>1 purchased. Or you can use one of the off-season weeks if</p> <p>2 you chose to, but typically, people won't pay the premium</p> <p>3 for the highest premium unit and want to come in January,</p> <p>4 which would be the lowest, you know, the slow time in</p> <p>5 Myrtle Beach.</p> <p>6 Q. Right. When you're converting hotel rooms to</p> <p>7 timeshare units, is there a break point that you're trying</p> <p>8 to reach on the intervals for a given space that justifies</p> <p>9 moving additional properties into the timeshare regime?</p> <p>10 A. The way our business model works for timeshare --</p> <p>11 I think that's what you're asking me.</p> <p>12 Q. Okay.</p> <p>13 A. Building three, what we would look at is how many</p> <p>14 units, which is 28 or 56, 28 two-bedrooms or 56 keys, how</p> <p>15 much I can generate in revenue against those units; revenue</p> <p>16 being timeshare revenue which is, and it's really net</p> <p>17 timeshare revenue.</p> <p>18 I sell a week to somebody, there's two different</p> <p>19 ways that someone can cancel. One is there's a rescission</p> <p>20 period in which they send a letter and they want to cancel,</p> <p>21 we let them cancel their contract; a cooling-off period.</p> <p>22 Or sometimes we sell weeks to people where they don't put</p> <p>23 -- we typically have ten percent as a minimum down payment</p> <p>24 someone has to put in. If someone pays \$10,000 for a week,</p> <p>25 they have to put a thousand dollars down. At that point in</p> | <p>1 question I heard, I'm being very vague, which I don't -- or</p> <p>2 all over the place, which I try not to be in deposition,</p> <p>3 but for us to decide whether we're building additional</p> <p>4 timeshare units or converting timeshare units is we want to</p> <p>5 make sure that my sales and marketing is going to be in the</p> <p>6 45 to 50 percent, my product cost is going to be in the 20</p> <p>7 to 25 percent.</p> <p>8 And then before we start doing big expansion, we</p> <p>9 also look at the percent of people that default on their</p> <p>10 mortgage. Those would be people that actually put down at</p> <p>11 least ten percent, were making payments, we deeded them</p> <p>12 interest in the property. And for whatever reason, they</p> <p>13 end up not fulfilling their obligations under the mortgage</p> <p>14 and we foreclose on them. We see what percent that is, and</p> <p>15 then we decide that we're making money and we move forward.</p> <p>16 But those are the big costs associated with our</p> <p>17 business.</p> <p>18 Q. Okay. That's very helpful.</p> <p>19 What I wanted to do was get some basics so I can</p> <p>20 understand the matrices to talk about how well this project</p> <p>21 was doing at different benchmarks. You go in with a</p> <p>22 business plan, everybody wants to make money --</p> <p>23 A. Correct.</p> <p>24 Q. -- and you're looking at this product.</p> <p>25 So let me back really out to a very high level and</p> |
| Page 74 | Page 76 |
| <p>1 time, they are now a full down. It triggers the promissory</p> <p>2 note, things like that.</p> <p>3 If someone cannot put the ten percent down on day</p> <p>4 of sale, we will allow them to put a lesser deposit down.</p> <p>5 That's called a pending sale. Those sales, some of them</p> <p>6 come good, which means they end up putting the ten percent</p> <p>7 down, and some do not come good, which means they gave us</p> <p>8 \$300 and they never gave us another dime towards the \$1,000</p> <p>9 down payment that I gave as an example on the \$10,000 sale.</p> <p>10 Once we see what that net timeshare revenue is,</p> <p>11 and we look at our construction cost of the building and</p> <p>12 convert it in units, we look to see that the product cost,</p> <p>13 which is construction cost divided by net timeshare</p> <p>14 revenue, is within the model that we would go forward with.</p> <p>15 Typically, in our business, that is 20 to 25 percent.</p> <p>16 Additional to that, we have sales and marketing</p> <p>17 costs that traditionally in our model is 45 to 50 percent.</p> <p>18 Q. Hmm.</p> <p>19 A. Now, this is traditional to the timeshare model as</p> <p>20 it existed back in 2006 and all the way through June or May</p> <p>21 of 2007. So I'm not talking about -- there's a new model</p> <p>22 in the timeshare business that was created by the whole</p> <p>23 credit crisis, so I am talking about while we had the</p> <p>24 temporary license in place.</p> <p>25 So I think you're asking me how do we -- the</p> | <p>1 ask you, as we move into the termination period of May of</p> <p>2 2007, if that's the right date, how well had this worked</p> <p>3 economically for Westgate?</p> <p>4 A. On the timeshare side?</p> <p>5 Q. Yes.</p> <p>6 A. Not as well as we would have liked, only because</p> <p>7 the credit worthiness of people who go vacation in Myrtle</p> <p>8 Beach, and particularly where we're located in Myrtle</p> <p>9 Beach, weren't as high as we would have liked. We were</p> <p>10 getting -- our mortgage default was a little higher than it</p> <p>11 was in other places, so we weren't making as much money as</p> <p>12 we would have liked to have been make going.</p> <p>13 Q. So that default issue was occurring. That's a</p> <p>14 contemporaneous thing that you're talking about. You're</p> <p>15 having a default experience that's higher than normal that</p> <p>16 is beginning to manifest itself somewhere between 2004 and</p> <p>17 2007.</p> <p>18 A. Only manifesting itself because now I have some</p> <p>19 data and some history of people I've sold, yes.</p> <p>20 Q. What I want to make sure of, to sort of back out</p> <p>21 of this, I assume that everything went haywire as of</p> <p>22 October of 2008 in your industry, as with other industries.</p> <p>23 A. It was a new world, and yes, haywire probably is</p> <p>24 too vague. We ran into the wall in our business.</p> <p>25 Q. Okay. I just want to make clear that we're not</p> |

19 (Pages 73 to 76)

| Page 77 | Page 79 |
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| <p>1 talking about that. We're talking about you get in there 2 and you realize something that hadn't been fully 3 appreciated, I take it, at the beginning, which is the 4 credit worthiness of folks at this particular facility is a 5 little lower than with some of the other facilities. 6 A. That is correct. 7 Q. And it's impacting your bottom line. 8 A. Correct. 9 Q. And obviously, that's not something for which my 10 client has any responsibility. Correct? 11 A. I was answering -- that has -- Holiday Inn now 12 knows something they probably didn't need to know, but you 13 asked a question and I just gave -- 14 Q. You're being very, very responsive. And the 15 reason I need to know what we were talking about a moment 16 ago is because I wanted to understand how the project was 17 going, and you've told me that. And I'm going to 18 characterize it in the way that I heard it. I'm going to 19 see if I'm correct. 20 The investment in this property proved to be 21 profitable, less so than you originally hoped in large part 22 because of these credit issues we talked about. 23 A. Right. And there was one other thing I didn't 24 interject, but I will now. 25 You brought up that we condominium-ized -- I will</p> | <p>1 At this point, we haven't sold all of those. So 2 if we needed any timeshare, we'll sell those as timeshare. 3 But it was a mixed-use building. 4 Q. Did the property get its CO post-credit crisis? 5 A. Again, I don't know the exact -- I don't remember 6 the exact date. Real close. 7 Q. Okay. 8 A. Real close. 9 Q. If what I'm hearing is correct, you experienced, 10 like a lot of our clients have, this experience of having 11 presold units and people just defaulting on the closings of 12 those units. 13 A. And walked away from the deposits. Correct. 14 Q. Okay. The financing arm of Westgate, is that a 15 separate entity? 16 A. Well, when I say, I'm just talking about me, the 17 company, we -- we sell the timeshare, you know, market, 18 sell it, have entered into a contract for purchase and 19 sale, and then a mortgage. 20 And then when we get ten percent down, we have 21 credit facilities with third-party banks that we pledge 22 those mortgages -- we hypothecate the mortgages to, so we 23 still have them. We just get an advance against it. 24 So is it a different company? I'm not even sure 25 how we structure our financing as far as under what</p> |
| Page 78 | Page 80 |
| <p>1 call it condominium-ized. I don't know, again, the legal 2 structure, but we set up the new building that we could 3 sell some whole ownership condominiums in. That's one of 4 the reasons why we expanded to the next building was 5 because we felt we could sell -- expanded when we did, 6 because there was a good market for selling whole ownership 7 condos at that time. 8 It just turned out that we made sales, but when it 9 came time to close sales, we happened to be in the middle 10 of the credit crisis. 11 So even though the credit worthiness wasn't as 12 high as I would have liked on the customers, the customers 13 we were, you know, having tour our timeshare, we were still 14 in a good market to be able to expand, build a tower, get a 15 little more timeshare inventory to sell. 16 But again, another reason we didn't make it or 17 haven't made as much money is we didn't also sell those 18 condominiums because you-know-what happened. 19 Q. And I didn't understand. I'm sure you told me 20 this very clearly before. The new tower, the new building, 21 is all whole ownership? 22 A. No. The new building has, I believe, 18-ish 23 stories, and we -- we have sold timeshare in about 24 70 percent of the building, and left the top units to sell 25 as whole ownership.</p> | <p>1 umbrella. 2 Q. But to your knowledge, you don't have -- a lot of, 3 no matter what you're selling, a lot of people who sell 4 inventory have captive financial institutions, but you 5 don't. You hypothecate to a third party. 6 A. Correct. 7 Q. Look at tab 35 under Exhibit 2. 8 A. Okay. 9 Q. And I'd like your help in interpreting what these 10 documents are. I believe they're your documents. Is 11 WG09500 your document? 12 A. Yes. 13 Q. Tell me what it is and how to interpret it. 14 A. This was a profit and loss statement for our hotel 15 operation at the Myrtle Beach property for 2004, 2005, 16 2006, 2007. And it shows -- this is just the hotel. This 17 is all hotel revenue, hotel expenses, and then the net 18 income or loss. 19 Q. So you had a loss in each year? 20 A. We had a loss in each year. 21 Q. And do you have documents that reflect the net 22 profit or loss inclusive of the timeshare and condo for the 23 whole project? 24 A. No, we do not. 25 Q. Look at the next document which is 9501.</p> |

20 (Pages 77 to 80)

Page 81

Page 83

1 A. Okay.
 2 Q. And tell me what this is.
 3 A. This is the occupancy percentage for the property,
 4 and it's broken down by the hotel portion, the HOA portion,
 5 and then the consolidated portion, which would be the
 6 combination of hotel and HOA for the years '04, '05, '06,
 7 '07, and it looks like it's through December of '07.
 8 Q. When you carry percentages for the hotel occupancy
 9 percentage, would that be inclusive of reduced rate rooms
 10 being used to market the timeshare?
 11 A. Yes.
 12 I'm sorry. That would include any room that we
 13 had occupied in the hotel rooms. So that would include
 14 wholesale. It would include transient groups and our --
 15 what we call internal marketing programs, telemarketing.
 16 Q. Okay. Do you know -- I'm looking at Page 9500.
 17 A. Yes.
 18 MR. FARRIER: We've asked for -- initially we
 19 thought we're not that interested in 2008 and 2009.
 20 We've asked to add on 2008 and 2009, and have you
 21 responded yet, Amanda?
 22 MS. CHAPMAN: No. I spoke with him about it,
 23 though.
 24 MR. FARRIER: I don't know whether you're going to
 25 raise an objection to that or not, but do you know?

1 Q. You put them back in the hotel operation,
 2 basically?
 3 A. I would rent them out as hotel rooms, yes.
 4 Q. Okay. In one of the areas in which I believe you
 5 are designated for, which is number nine, the amount of
 6 revenue and profit realized by Westgate related to the
 7 property during the period in which it operated --
 8 A. Yes.
 9 Q. -- what I would really like to understand is
 10 whether or not you were making money on this property if
 11 you put it all together. If you put the timeshare
 12 business, the hotel business, and we don't know when the
 13 condo business comes in, so I'm just saying whatever is
 14 there from 2004 through 2007, can you tell me whether you
 15 were making money at this property?
 16 A. I was not making money at this property.
 17 Q. Were you losing money?
 18 A. I was losing money at this property.
 19 Q. And did that cause any alarm?
 20 A. No. The only reason it didn't cause alarm is when
 21 you sell timeshare, because you've asked about it all, when
 22 you sell -- I shouldn't say that.
 23 Yes, it always causes me alarm when I'm losing
 24 money. I don't want to lose money any time.
 25 Q. Right.

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1 I'll ask you the question.
 2 Do you know whether 2008 -- I'm sorry, 2008,
 3 through October of 2008, how that was trending?
 4 MS. CHAPMAN: I'll object to form, but you can
 5 answer, if you know.
 6 THE WITNESS: I don't know off the top of my head.
 7 BY MR. FARRIER:
 8 Q. Okay. What I'm curious about is whether or not
 9 the experience pre-credit crises and post termination,
 10 after you pulled down the Holiday Inn flag, whether the
 11 economic experience was better or worse than it was when
 12 you were flying the Holiday Inn flag.
 13 A. I don't know off the top of my head.
 14 Q. Look at 9502, and see if you can tell me what that
 15 document is.
 16 A. This is our developer net contribution. What that
 17 means is the units that are within the HOA, there are
 18 unsold units that the developer has to pay the maintenance
 19 fees on. And when we do that, we rent those units out to
 20 try to recoup the maintenance fees we pay on the unsold
 21 units.
 22 This exhibit here, this financial here shows how
 23 much I paid in development assessment, how much rental I
 24 got back, and whether we made money or lost money on the --
 25 on the developer owned units.

1 A. But there are some costs in a timeshare that you
 2 start to sell units, and when you start to build what's
 3 called an in-house program, meaning you have owners, and
 4 when they come back you can sell them an additional week,
 5 it has very low sales and marketing cost. So we were
 6 hopeful that we could turn it around sooner rather than
 7 later and start to generate a profit.
 8 And we were also hopeful that we could sell off
 9 units as whole ownership.
 10 To this date, I still have not turned a profit at
 11 that property. Now I'm concerned.
 12 Q. Is there -- is there a trend in your experience
 13 with similar timeshare developments by which you begin to
 14 return profit?
 15 In other words, is this a business where you're
 16 looking for a five to seven-year period of investment that
 17 begins to return profit on the back end of that cycle, or
 18 is it a fairly steady graph?
 19 A. Depends. It has to be a more specific question,
 20 because it really depends on how much you've paid for the
 21 property, how many units you've built, how much -- you
 22 know, what's your up front cost and what's your sales pace
 23 to be able to generate, to get to a profit.
 24 So there are some instances that you could
 25 generate a profit relatively quick if you spent very little

21 (Pages 81 to 84)

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| <p style="text-align: right;">Page 85</p> <p>1 on the property and you had a big in-house program and a 2 lot of marketing. And then there are other instances where 3 you have a very high up front cost and very little 4 marketing ability that will take five to seven years to 5 turn a profit; not really a deal that Westgate would like 6 to do. 7 Q. Understood. If you had it to do over again, you 8 probably wouldn't have done this deal. 9 MS. CHAPMAN: Object to form. 10 THE WITNESS: What deal are you asking? 11 BY MR. FARRIER: 12 Q. You would not have invested in this property, 13 entered into the 9/24/2004 agreement to purchase. 14 MS. CHAPMAN: Objection to form. 15 THE WITNESS: If the question is do I wish we 16 didn't own this property today, and if I could turn 17 back the clock, would I, and not purchase it? Yes. 18 BY MR. FARRIER: 19 Q. That was my question. 20 A. Okay. 21 Q. You mentioned a new model that had come into the 22 industry. Can you tell me when that occurred, and as 23 briefly as you can, what the new model is. 24 A. September of 2008 is when the new model was 25 created.</p> | <p style="text-align: right;">Page 87</p> <p>1 and manage? 2 A. I make a flat salary and I don't -- I don't have 3 any bonus structure, nor do any of my peers related to 4 specific projects. 5 Q. Okay. Are you tagged with specific projects? To 6 the extent, and I want to speak very much in the 7 vernacular. To the extent some property becomes a dog, is 8 it Dave's dog or is it more of a team approach to projects 9 like this? 10 A. At the executive level, it's a team dog. There's 11 individuals who work at specific properties that they would 12 be the ones that we are leading and managing. 13 Q. Right. 14 A. But there are no projects -- when I'm talking 15 about my level, which would be include Mark Waltrip, we 16 don't have specific that's yours, this is mine. They're 17 ours. 18 Q. Okay. Good. And just so I understand the 19 culture. The culture is, in a situation like this where 20 you've got a less profitable investment, there is generally 21 support within the organization at the executive level, 22 say, to the extent that this is a property that you're 23 managing, a sense of, well, Dave's got his hands full with 24 the Myrtle Beach market because it's really a different 25 kind of market than we originally thought it was, that sort</p> |
| <p style="text-align: right;">Page 86</p> <p>1 Q. I'm fine. Just in terms -- it's interesting, but 2 it doesn't really relate to the case, I don't think. 3 A. It was when Lehman Brothers went down. 4 And how has the business model changed? That was 5 the second part of your -- 6 Q. Yes. 7 MS. CHAPMAN: Objection, to the extent you're 8 asking him how it changed. 9 MR. FARRIER: You know what, let's skip beyond 10 this, because it really doesn't impact. I'm interested 11 just because I'm interested, but it doesn't impact the 12 case. 13 THE WITNESS: We can do that after. 14 BY MR. FARRIER: 15 Q. How many properties, approximately, does Westgate 16 have? And I don't mean units. I mean, how many places 17 like Myrtle Beach are in the Westgate empire? 18 A. 28. 19 Q. And you're the second largest in the world? 20 A. We're the largest privately owned in the world. 21 Q. Is there any -- is there any personal 22 responsibility that you or -- and this is a question for 23 David Crabtree -- you or the other folks within Westgate 24 have for a particular project? Are you judged, bonused, 25 paid on the profitability of the projects that you initiate</p> | <p style="text-align: right;">Page 88</p> <p>1 of mind set. 2 A. It would more of the mind set that if the person 3 wasn't performing who was there, I would get a new leader 4 and put them in there to perform. 5 Q. Okay. 6 A. With that said, I run the marketing for all of the 7 properties. If they're all dogs, then it's Dave's dog. 8 Q. Don't let this frighten you, but turn back to the 9 first tab in the document. 10 A. We're going backwards. Tab one. 11 Q. Just turn back there, because I want to make sure 12 that I've covered what I need to with you on these 13 documents. 14 A. Okay. 15 Q. Let me break out of this and ask you some 16 Mr. Crabtree questions. So, just some bio. You are how 17 old? 18 A. I'm 43 years old. 19 Q. And your date of birth is what? 20 A. 8/5 of 1966. 21 Q. And one of the things that we will do is run 22 background checks on people, and so I ask you this, these 23 questions, for these reasons. They also have to do with 24 the qualification of witness in South Carolina. 25 What is your social security number?</p> |

22 (Pages 85 to 88)

| Page 89 | Page 91 |
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| <p>1 MS. CHAPMAN: Off the record, please.</p> <p>2 MR. FARRIER: That's fine. This can be off the</p> <p>3 record.</p> <p>4 (Discussion off the record.)</p> <p>5 MR. FARRIER: Back on the record.</p> <p>6 BY MR. FARRIER:</p> <p>7 Q. Your address?</p> <p>8 A. 9006 Southern Breeze Drive, Orlando, Florida,</p> <p>9 32836.</p> <p>10 Q. Any relatives in South Carolina?</p> <p>11 A. Not that I know of, and I don't mean that cute.</p> <p>12 Q. We've all had our youth.</p> <p>13 Have you ever had your rights taken away and not</p> <p>14 permanently restored?</p> <p>15 A. No.</p> <p>16 Q. Never been involuntarily committed to either a</p> <p>17 psychiatric or a drug or alcohol facility?</p> <p>18 A. No.</p> <p>19 Q. And never been convicted of a crime with a</p> <p>20 sentence greater than one year?</p> <p>21 A. No.</p> <p>22 Q. What is your educational background?</p> <p>23 A. I have an undergraduate degree in hotel/restaurant</p> <p>24 management from the University of Wisconsin-Stout, and I</p> <p>25 have an MBA from UNLV.</p> | <p>1 A. Yes.</p> <p>2 Q. Tab 3 in Exhibit No. 2. Thank you.</p> <p>3 This is a letter that you drafted and sent to</p> <p>4 Kathy Pitchford on October 27, 2004.</p> <p>5 A. Okay.</p> <p>6 Q. Is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And as of this date, you were proposing to license</p> <p>9 all the rooms there to Holiday Inn initially, and then</p> <p>10 remove rooms as needed for timeshares on a floor by floor</p> <p>11 basis. Correct?</p> <p>12 A. That's the way it reads.</p> <p>13 Q. And in fact, that was the plan that Westgate had</p> <p>14 in mind at the time. Correct?</p> <p>15 A. Very similar to the deal I did with Ramada Inn.</p> <p>16 Q. Okay. And if you look at subparagraph eight, the</p> <p>17 idea was within the ten years of the license agreement, all</p> <p>18 of the hotel rooms would be taken out of the Holidex system</p> <p>19 and be timeshares. Correct?</p> <p>20 A. That was the original thought, yes.</p> <p>21 Q. And if you look at sub 11, the idea was that the</p> <p>22 Holiday Inn franchise was not going to be used as part of</p> <p>23 the timeshare sales process. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. Now, when you actually began to market the</p> |
| Page 90 | Page 92 |
| <p>1 Q. Where have you worked prior to working with</p> <p>2 Westgate?</p> <p>3 A. Right out of college, I was a manager of a Ruby</p> <p>4 Tuesday's restaurant. Then I moved to a hotel management</p> <p>5 company called AmeriHost Properties. I was a property</p> <p>6 controller.</p> <p>7 Then I went and worked for the actress Debbie</p> <p>8 Reynolds in Las Vegas, Nevada. We had one property; ended</p> <p>9 up taking the company public. I helped run the public</p> <p>10 company with her. She was the largest shareholder, but her</p> <p>11 son and myself.</p> <p>12 And then I met David Siegel and started working</p> <p>13 for him in October of 1998.</p> <p>14 Q. Do you have any degrees or do you hold any titles</p> <p>15 other than what you just mentioned?</p> <p>16 A. No.</p> <p>17 By the way, UNLV is University of Nevada, Las</p> <p>18 Vegas.</p> <p>19 Q. The Lobos.</p> <p>20 A. No, the Runnin' Rebels. That's New Mexico.</p> <p>21 THE WITNESS: Can we go off the record one second?</p> <p>22 I can't let this one go.</p> <p>23 (Discussion off the record.)</p> <p>24 BY MR. FARRIER:</p> <p>25 Q. Look at Exhibit No. 3, please.</p> | <p>1 timeshares, you began to use the Holiday Inn franchise as</p> <p>2 part of the sales process, did you not?</p> <p>3 A. We did not.</p> <p>4 Q. You never marketed to the hotel customers?</p> <p>5 A. Not through the reservation system.</p> <p>6 Q. How about when they were on-site?</p> <p>7 A. Once someone is on-site, that's completely</p> <p>8 different in my opinion.</p> <p>9 Q. They're fair game.</p> <p>10 A. Then I'm marketing to them, but definitely not</p> <p>11 through the use of Holiday Inn's name or the reservation</p> <p>12 system.</p> <p>13 Q. Okay. And I didn't understand that distinction,</p> <p>14 so help me out with that a bit.</p> <p>15 Once they are on-site, you feel like they're fair</p> <p>16 game for the marketing of the timeshares. Correct?</p> <p>17 A. Correct. I have a booth right in the middle of</p> <p>18 the lobby that I sell -- I said this earlier, but I'll sell</p> <p>19 attraction tickets, discounted restaurant vouchers, and</p> <p>20 other things. And when an individual comes over to the</p> <p>21 booth, I'll offer them those attraction tickets or</p> <p>22 restaurant vouchers or whatever else may be there for sale</p> <p>23 or for free if they want to take a 90-minute tour.</p> <p>24 So I don't -- I don't perceive that as being</p> <p>25 through the franchise system, just as if I have 50 hotels</p> |

23 (Pages 89 to 92)

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| <p style="text-align: right;">Page 93</p> <p>1 that I have booths in in this town, and say all of them or 2 most of them have a franchise, a flag on the property, when 3 the people -- I don't have franchise agreements with 4 whoever the flag is on that hotel. 5 Q. Okay. Look at tab four, if you will. 6 A. Okay. 7 Q. This is a letter that you drafted and sent to 8 Kathy Pitchford on November 24, 2004. Correct? 9 A. Yes. 10 Q. And I don't understand what conversation may have 11 taken place in the interim, because it looks to me like 12 you're trying to clarify things in this letter to Cathy. 13 If you can, tell me what her reaction was to your 14 tab three letter and what you were trying to clear up in 15 tab four. 16 A. I don't specifically remember exactly what her -- 17 what our conversation was. I mean, I could read this and, 18 you know, give an educated guess on what it was. 19 Q. Really, I'm asking anything you recall. Anybody 20 could draw inferences from a letter. 21 A. Correct. 22 Q. But do you recall what she may have been concerned 23 with? 24 A. I don't remember. 25 Q. You knew at the time of November 24th that the</p> | <p style="text-align: right;">Page 95</p> <p>1 License is not renewable. The License confers no rights of 2 license renew following the expiration of the License Term. 3 All of the renewals were bound by similar terms, 4 although the time frames varied. Correct? 5 A. Correct. 6 Q. If you'd look at tab seven -- 7 A. Okay. 8 Q. Have you ever seen this document before? 9 A. I don't remember seeing this document, per se. 10 Q. Okay. This is a document, I will assert, which is 11 the triggering and sort of the call of the liquidated 12 damages that actually was anticipated in the 9/24/2004 13 letter. I'm asserting that to you. 14 The fact that this was occurring was not a 15 surprise to you, was it? 16 A. No. 17 Q. In fact, it was anticipated by you that there 18 would be liquidated damages that was asserted against MBII. 19 A. Yes. 20 Q. And if we look at the next document, document 21 number eight, as of January 6th of 2005, there is still no 22 long-term franchise agreement in place. Correct? 23 A. Correct. 24 Q. As of January 6, 2005, Westgate had paid this 25 \$1.264 million into escrow. Correct?</p> |
| <p style="text-align: right;">Page 94</p> <p>1 application was contingent -- the application for license 2 agreement was contingent upon approval. Correct? 3 A. Correct. 4 Q. Look at tab number six. 5 A. Okay. 6 Q. And specifically Page 1290, looking at the Bates 7 stamp. 8 A. Okay. 9 Q. And I just wanted to show you this as an example. 10 This is the first interim temporary license. Correct? 11 A. Okay. Correct. 12 Q. I will say it's an early one. I don't actually 13 know if there might have been one for November, but I 14 believe this was the first one. 15 But this is what the licenses -- the temporary 16 licenses that were executed by you looked like. Correct? 17 A. I believe we signed one temporary license, and 18 then we just kept signing extension addenda. 19 Q. And as you signed these documents, I asked you 20 about some of the terms, and we confirmed that both parties 21 abided by the terms of the temporary licenses. Correct? 22 A. Correct. 23 Q. And if you look at the page I'm showing you, I 24 just wanted to confirm this part of this agreement: This 25 License will expire without notice on six months. This</p> | <p style="text-align: right;">Page 96</p> <p>1 A. There was money put in escrow. I don't think it 2 was on that date, but there was money put into escrow about 3 that time, yes. 4 Q. I'm saying that as of that date, they had paid 5 that into escrow. Correct? 6 A. Correct. 7 Q. And this is evidence of that escrow being drawn 8 upon. Correct? 9 A. Correct. 10 Q. If you look at tab number nine -- 11 A. Yes. 12 Q. I wanted to ask you about a genre of potential 13 claims in a lawsuit like this. In this document, there is 14 a statement we signed a contract for the installation of a 15 lazy river pool. During this time period, it is, I think, 16 an agreed fact that Westgate spent money on this property 17 in various ways. Correct? 18 A. Yes. 19 Q. They built this 18 story tower. They did things 20 like put in a lazy river pool. They refurbished the hotel 21 facilities or Holiday Inn refurbished them and you were 22 required to pay for them, things like that. Correct? 23 A. Correct. 24 Q. None of those things forms the basis of a claim 25 for misrepresentation in this case, do they?</p> |

24 (Pages 93 to 96)

| Page 97 | Page 99 |
|---|---|
| <p>1 MS. CHAPMAN: Object to form.</p> <p>2 THE WITNESS: I don't know the legal requirements.</p> <p>3 I don't know. I don't think I can answer that.</p> <p>4 BY MR. FARRIER:</p> <p>5 Q. Let me ask it in a very simple way. You were</p> <p>6 doing these things as an investment on the property,</p> <p>7 ultimately for the gain of Westgate. Correct?</p> <p>8 A. For the gain of us and, hopefully, full well</p> <p>9 knowing that if we were going to enter into a long-term</p> <p>10 agreement with Holiday Inn or another flag, these were</p> <p>11 things that needed to be done.</p> <p>12 Q. What I'm trying to get to is, you weren't misled</p> <p>13 by any statements from anybody associated with my client</p> <p>14 into doing any of these things, were you?</p> <p>15 MS. CHAPMAN: Object to the form.</p> <p>16 MR. FARRIER: Go ahead.</p> <p>17 THE WITNESS: Not that I am aware of.</p> <p>18 BY MR. FARRIER:</p> <p>19 Q. Look at tab 13, if you will. Do you recall being</p> <p>20 at a meeting -- I'm sorry. Have you had a chance to look</p> <p>21 at the letter?</p> <p>22 A. I'm sorry. I'm looking at it right now.</p> <p>23 Q. Sure. Do you recall being at a meeting with John</p> <p>24 Merkin, Julie Baldwin, and these folks, on or about this</p> <p>25 point this time?</p> | <p>1 the deal done.</p> <p>2 Q. And can you place either of those meetings in</p> <p>3 time?</p> <p>4 A. I wish I could, but that one I'm completely</p> <p>5 drawing a blank on.</p> <p>6 Q. Let me ask you a couple of questions that go back</p> <p>7 earlier in the day, and I'm not trying to repeat things,</p> <p>8 but you mentioned earlier that everything that came into</p> <p>9 Richard Moore, he would share with you.</p> <p>10 A. When I say that, I'm not talking about a hundred</p> <p>11 percent of everything he receives. I'm talking about</p> <p>12 everything that Richard Moore gets in related to franchise</p> <p>13 issues, comments, negotiation that he knows that I'm a part</p> <p>14 of, he always sends it on to me because we have a very good</p> <p>15 relationship, and he knows I would want it and he respects</p> <p>16 me and I respect him.</p> <p>17 Q. And by what medium does he send it on to you?</p> <p>18 A. Typically, depending on how it is back then, it</p> <p>19 would probably be fax. Now, if it was today, it would</p> <p>20 probably be scanned and e-mailed.</p> <p>21 Q. Are your offices close to each other?</p> <p>22 A. No. We're across town.</p> <p>23 Q. In the last paragraph, the last two paragraphs,</p> <p>24 there's a discussion in here. Have you ever seen this</p> <p>25 letter before?</p> |
| Page 98 | Page 100 |
| <p>1 A. I remember being in two different meetings, and I</p> <p>2 can't remember the specific date, but it would be</p> <p>3 reasonable to be, at this point in time, at one of the</p> <p>4 meetings. So yes, I do remember meeting twice with Holiday</p> <p>5 Inn.</p> <p>6 Q. What was discussed in those meetings?</p> <p>7 A. Well, there were two different meetings. One, the</p> <p>8 first one, was us talking about our vision of the property,</p> <p>9 what we were planning to do with the property, and even</p> <p>10 brought -- Waltrip, the first meeting, Waltrip was at also,</p> <p>11 and he brought a swatch board, a swatch board meaning with</p> <p>12 some conceptual design elements of what we were going to do</p> <p>13 with the upgrading of the facility.</p> <p>14 So the first one was kind of meet and greet, break</p> <p>15 bread, show them what we're looking to do, hopefully get</p> <p>16 them to understand and like what we're going to be doing so</p> <p>17 we could get to finalizing the ultimate goal which was the</p> <p>18 ten-year agreement.</p> <p>19 The second meeting, which again I don't know which</p> <p>20 meeting was which, was only attended by Richard Moore, Rob</p> <p>21 Jackson, and myself, and that was talking more about the</p> <p>22 specifics of how we were developing the timeshare plan and</p> <p>23 any expansion that we're doing and things like that.</p> <p>24 Q. Okay.</p> <p>25 A. So that was more for the negotiation of getting</p> | <p>1 A. I don't remember seeing it.</p> <p>2 Q. Contemporaneous to this letter, and I mean that</p> <p>3 not specific to September 28th of 2005, but in this 2005</p> <p>4 negotiation time frame, were you aware of the process</p> <p>5 internal to my client for approval of a franchise agreement</p> <p>6 as outlined in these two paragraphs?</p> <p>7 A. I was aware of how, on a very broad basis, of how</p> <p>8 it worked. It would be the franchise salesperson, their</p> <p>9 boss would figure out if there was a property that they</p> <p>10 wanted to license. They would go through their process to</p> <p>11 make sure there was no restrictions or reason they</p> <p>12 couldn't, maybe even through legal, and then they would</p> <p>13 present it to a committee who would hopefully approve or</p> <p>14 deny.</p> <p>15 Q. Okay. And let me just ask you if you understood,</p> <p>16 at this point this time, these basic tenets of the process.</p> <p>17 First of all, that there was a franchise approval committee</p> <p>18 that made the final decision.</p> <p>19 A. Yes.</p> <p>20 Q. And that there were people that you interfaced</p> <p>21 with, but ultimately that would have to be presented to</p> <p>22 that committee for the approval.</p> <p>23 A. Correct.</p> <p>24 Q. And that until the approval or disapproval, I</p> <p>25 should say -- start over.</p> |

25 (Pages 97 to 100)

| Page 101 | Page 103 |
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| <p>1 Until the approval was granted, that it was always 2 contingent that it was not approved. 3 MS. CHAPMAN: Object to form. 4 MR. FARRIER: That was an awful question. 5 MS. CHAPMAN: I'm trying to decipher that. 6 BY MR. FARRIER: 7 Q. Well, there's a statement in here that the 8 acceptance and processing of an application should not be 9 considered as an indication that the application will be 10 approved. Do you see that statement? 11 A. Yes. 12 Q. And you understand that to be the status of the 13 process of the committee. Correct? 14 A. Correct. 15 Q. And you understood it at the time. 16 A. Correct. I also understand that they're not going 17 to present it to the committee unless they believe it is 18 going to be passed, because no one wants to be denied even 19 if they're not the owner of the property. Internal to 20 Holiday Inn, they are the owner of the property. 21 Q. I know that you're not the quality -- the quality 22 spokesperson for this property, but were you aware that 23 there were quality concerns being expressed by my client 24 that needed to be addressed in their mind prior to moving 25 forward with a long-term franchise agreement?</p> | <p>1 Q. Look under tab 17, and it is an e-mail from 2 Richard Moore to Elisa Adams. First of all, have you seen 3 this document prior to today, to your knowledge? 4 A. Not that I remember. 5 Q. It attaches a business plan for the Holiday Inn 6 Myrtle Beach oceanfront, a three page document bearing 7 Bates labels HHF200465934 -- 8 A. Yes. 9 Q. -- through 936. 10 A. Okay. 11 Q. Can you identify this business plan for me? 12 A. I believe, I do remember seeing this. 13 Q. What is it? Is it a document prepared by 14 Westgate? 15 A. It was a document that, via a phone conversation, 16 I believe -- I think I'm remembering this -- where we 17 discussed over the phone that Holiday Inn was requesting 18 kind of an outline of what we were planning to do with the 19 property. Richard Moore was discussing this with me, but 20 he was letting me in on a conversation he was having. 21 And then we put together, as succinctly as we 22 could, what we were looking to do on the property. 23 Q. Okay. Look at tab 20, please. 24 A. Okay. 25 Q. And this does not have a signature on it, so if</p> |
| Page 102 | Page 104 |
| <p>1 A. I really never focussed on it. 2 MS. CHAPMAN: Richard, would you mind if we take a 3 -- well, finish your answer, please. 4 THE WITNESS: But a PIP is not uncommon for 5 anybody entering into any franchise agreement. 6 MR. FARRIER: Let's take a break. 7 MS. CHAPMAN: Thank you. 8 (Brief recess.) 9 BY MR. FARRIER: 10 Q. Look at tab 15, if you will. I just need you to 11 confirm that this is an e-mail that you received on 12 January 4, 2006. 13 A. I don't recall specifically, but it shows that I 14 received it, so. 15 Q. And it appears to attach the items which could be 16 considered deal breakers. 17 A. Correct. 18 Q. Do you recall those being deal breakers at the 19 time? 20 A. I have to turn -- I haven't looked at the second 21 page yet. Is that the next page? 22 Q. I believe it to be, but that's ultimately a 23 question for you. 24 A. I don't remember specifically this going on, but 25 it doesn't seem unreasonable if this is what was attached.</p> | <p>1 you would look through it, I am curious to know who drafted 2 this letter, if you can tell. 3 A. This reads as if I wrote it, so I believe this is 4 a letter from me. 5 Q. Okay. 6 A. I'm surprised there's no signature on it, though, 7 but I believe this letter is from me. 8 I am the only one in the organization that would 9 write a letter like this to Holiday Inn, unless it came 10 from Siegel directly, but I know that did not happen. 11 Q. Okay. In this letter, it clearly reads as though 12 the author of this letter was unaware of any approval that 13 had been extended as of this date. 14 A. Correct. That broke up. I said "correct." 15 Q. One of the things I didn't complete before that I 16 think we can cover pretty quickly is I asked you what my 17 client had done improperly, untowardly, unfairly to 18 Westgate under your factual scenario, and I told you I was 19 going to ask it both ways. 20 If, in fact, our factual scenario is correct, and 21 that is that an approval was communicated sometime in 2006 22 of a long-term kind of license, would you agree with me 23 that my client had done everything that it should have with 24 regard to the negotiations with Westgate? 25 MS. CHAPMAN: Object to form.</p> |

26 (Pages 101 to 104)

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| <p style="text-align: right;">Page 105</p> <p>1 THE WITNESS: The only reason I can't say yes or 2 correct on that, on your question, is because if it was 3 everything, I think we would have entered into an 4 agreement. 5 BY MR. FARRIER: 6 Q. You would agree with me that under our factual 7 scenario as presented, there was no act or omission to have 8 caused harm to Westgate. Correct? 9 MS. CHAPMAN: Object to form. 10 THE WITNESS: I don't -- you have not shown me 11 anything where there was any malicious intent that I am 12 aware of. 13 BY MR. FARRIER: 14 Q. And you're not aware of any such -- malicious 15 intent, actually, as we lawyers speak, is a fairly elevated 16 level of bad things. So I'm going to ask you -- I'm going 17 to recharacterize your words. 18 You're not aware of anything that my client did to 19 cause harm to you, are you? 20 MS. CHAPMAN: Object to form. 21 THE WITNESS: The only thing, again, and I said it 22 earlier, too. I know it's been awhile, but I always 23 try to stay consistent on everything I do. I don't 24 know exactly what was happening within the confines of 25 the walls at Holiday Inn. I don't know if the intent</p> | <p style="text-align: right;">Page 107</p> <p>1 sent a letter to them. 2 Q. But you don't have any active recollection of 3 that? 4 A. I can't -- I can't remember anything specific 5 right now. 6 Q. Look at tab 30 in Exhibit 2. 7 A. Okay. 8 Q. I would just like you to confirm that you received 9 this letter on or about December 6, 2004. 10 A. I believe so. 11 Q. You were aware, prior to executing the temporary 12 license, that the property was receiving failing QFI 13 scores? 14 A. I was. 15 Q. And the real quality discussions or negotiations 16 would have taken place between Mr. Moore and Holiday? 17 A. On an operational level, yes. When I say 18 operation, I mean getting the stuff done that needed -- the 19 requirements to get done, yes. 20 Q. If you will look at Exhibit No. 31, first confirm 21 that this is a letter you received on or about July 12th or 22 13th, 2005. 23 A. Yes. 24 Q. One of the things that you suggested as plausible 25 that would be a bad thing for my client to do would be to</p> |
| <p style="text-align: right;">Page 106</p> <p>1 of Holiday Inn was to just continue to take franchise 2 fees from me without ever planning to enter into an 3 agreement with me. If they did that, I think there is 4 some harm. 5 You have not shown me anything that has shown me 6 that they have done that. 7 Q. Okay. And conversely, if the true facts are that 8 they were negotiating with the intent of entering into the 9 ten-year deal with you, you would agree that they have not 10 done anything to cause you harm. 11 MS. CHAPMAN: Object to form. 12 THE WITNESS: If their intent was to enter into a 13 ten-year deal with me, once I entered into a ten-year 14 deal, my plan was to get my liquidated damage back, or 15 to reduce, more particularly, reduce the franchise fees 16 to get it back, I would not have been caused any harm. 17 BY MR. FARRIER: 18 Q. Okay. Do you recall any demand you made to either 19 Merkin or Adams, in this June time frame, saying that my 20 client had a week to show progress on the application or 21 the relationship would be terminated? 22 A. Typically, when I get to a point where I feel like 23 we're not getting anywhere and I start to get frustrated, I 24 usually give a short period of time to show good faith. So 25 that wouldn't surprise me if I had that conversation or</p> | <p style="text-align: right;">Page 108</p> <p>1 milk you for fees while just stretching out the 2 negotiations. 3 You've asserted that you don't have any evidence 4 that that's a possibility of a bad thing that my client 5 might have done. Correct? 6 A. Correct. 7 Q. In fact, in this letter, my client is actually 8 seeking to default you as early as July of 2005. Correct? 9 A. Correct. 10 Q. And that would run counter to the idea of someone 11 milking you for fees. Correct? 12 MS. CHAPMAN: Object to form. 13 THE WITNESS: I believe they still wanted me to 14 get up to standard, and they probably used this as 15 leverage to push us to make sure that we complied to 16 get up to the quality standard. Even milking me or 17 milking me for fees, they still don't want to do 18 anything to tarnish their brand. The brand would still 19 come over the fees that we would be paying in a value 20 proposition. 21 BY MR. FARRIER: 22 Q. And that's just good business on their part to try 23 to maintain the brand. Correct? 24 A. Yeah. I would never dispute that, correct. 25 Q. Look at tab 32 and confirm that this is a letter</p> |

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| Page 109 | Page 111 |
|---|---|
| <p>1 that you received on or about October 21, 2005.</p> <p>2 A. Yes.</p> <p>3 Q. And similar to the previous letters, this is a</p> <p>4 90-day notice of default and termination.</p> <p>5 A. Yes.</p> <p>6 Q. Unless the OSI scores come up. Correct?</p> <p>7 A. Correct.</p> <p>8 Q. And this is just consistent with my client trying</p> <p>9 to maintain the quality of its brand. Correct?</p> <p>10 A. Correct, which I would never say anything bad</p> <p>11 about your client or the quality of their brand. I think</p> <p>12 they are very consistent and they do a good job.</p> <p>13 MR. FARRIER: Would you allow us to meet for a</p> <p>14 moment?</p> <p>15 THE WITNESS: Sure.</p> <p>16 (Brief recess.)</p> <p>17 BY MR. FARRIER:</p> <p>18 Q. All right. Let's start with tab 13 of Exhibit</p> <p>19 No. 2, and what I want to do is orient ourselves to where</p> <p>20 we are in September of 2005.</p> <p>21 As of September, 2005, the application for the</p> <p>22 long-term franchise agreement had not yet been submitted to</p> <p>23 or reviewed by the FAC, the franchise approval committee.</p> <p>24 Correct?</p> <p>25 A. That's what appears here, yes.</p> | <p>1 names listed that I said it seemed reasonable.</p> <p>2 I don't believe Richard had any meeting face to</p> <p>3 face with Holiday Inn without me, so I could have been.</p> <p>4 Q. Okay. But the point here is in December of 2005,</p> <p>5 the status is that my client needed what is going to be set</p> <p>6 out in a business plan in order to go forward with the FAC</p> <p>7 approval process. Correct?</p> <p>8 A. That's the way this reads, yes.</p> <p>9 Q. So we flip forward to January 25th of 2006.</p> <p>10 A. What tab?</p> <p>11 Q. 17. Thank you.</p> <p>12 A. Okay.</p> <p>13 Q. And as of January 25th, would you agree with me</p> <p>14 that this proposal is about to go before the FAC for the</p> <p>15 first time, because we now have the business plan in place.</p> <p>16 A. That's the way this reads, yes.</p> <p>17 Q. If you'll turn to tab 18.</p> <p>18 A. Okay.</p> <p>19 Q. We know from the previous documents that we looked</p> <p>20 at, the default documents on the quality issues, that as of</p> <p>21 January 31, 2006, there were quality issues -- I'm sorry.</p> <p>22 Strike that.</p> <p>23 The short-term extension has expired as of this</p> <p>24 date, and my client is extending it to allow the FAC</p> <p>25 process to occur. Correct?</p> |
| Page 110 | Page 112 |
| <p>1 Q. And you knew that that was necessary to actually</p> <p>2 put that agreement into place. Correct?</p> <p>3 A. Correct.</p> <p>4 Q. And we flip forward to tab 14, and we see a</p> <p>5 discussion between Richard Moore and Julie Baldwin about</p> <p>6 what we need to go before the franchise action committee.</p> <p>7 And you'll see at the bottom, "Please help me by providing</p> <p>8 me what you would like to see in there." This is from</p> <p>9 Richard to Julie.</p> <p>10 A. Yes.</p> <p>11 Q. And Julie -- and I'm adding this overlay, in what</p> <p>12 might be a little bit of frustration, second paragraph, is</p> <p>13 saying, and I'm not quoting, it says I've already told you</p> <p>14 that. She says "Richard during our meeting in October, I</p> <p>15 explained to you that we needed all these questions</p> <p>16 answered so we could proceed in January providing the GSTS</p> <p>17 scores were improving. I told you that IHG wanted this to</p> <p>18 work out and we were willing to negotiate this in every way</p> <p>19 possible."</p> <p>20 So, a couple of questions about this.</p> <p>21 Were you at this meeting when what was needed was</p> <p>22 outlined back in October?</p> <p>23 A. As I said earlier, I was in two meetings there. I</p> <p>24 can't remember who exactly was there from Holiday Inn</p> <p>25 specific. There was a prior correspondence that had some</p> | <p>1 A. That's the way this reads, yes.</p> <p>2 Q. And you don't have any evidence to suggest</p> <p>3 otherwise, do you?</p> <p>4 A. No, I do not.</p> <p>5 Q. And so we're extending the temporary license for</p> <p>6 another 30 days. Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then we move forward to the June time</p> <p>9 frame, which is 20 and 21.</p> <p>10 A. Okay.</p> <p>11 Q. Do you know anything that's going -- this is not</p> <p>12 an intentionally created blank period that we've made from</p> <p>13 the documents. I just can't tell anything that's going on</p> <p>14 in here, in this time period. Do you know?</p> <p>15 Can you help us with anything that you recall that</p> <p>16 might have been going on in this time frame?</p> <p>17 A. I can't remember exactly what went on because -- I</p> <p>18 mean, you're talking about from January 31st to</p> <p>19 February 2nd?</p> <p>20 Q. Right. No, no, no. From -- here.</p> <p>21 The time frame is, in September -- September,</p> <p>22 October, there's a meeting that occurs purportedly.</p> <p>23 A. Correct.</p> <p>24 Q. You may have been there. And we say, look, we've</p> <p>25 got to have these things to go before the FAC?</p> |

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1 A. Correct.
2 Q. And we follow up with that in December.
3 A. Correct.
4 Q. That material isn't provided to us until January.
5 A. Okay.
6 Q. So that the first time the FAC is actually able to
7 evaluate the proposal is going to be in February of 2006.
8 A. Okay.
9 Q. Do you know what happens between that time frame
10 and the time on June 7th when you write your letter saying
11 something's got to happen here?
12 A. I'm not exactly sure what happened between then
13 and after reading my letter. I could pretty much tell you
14 at that time I probably didn't know what was going on
15 between those two dates.
16 Q. Right. And almost immediately thereafter, there
17 is an addendum proposed by my client to you for use in a
18 long-term licensing agreement. Correct?
19 A. Yeah. The exact date, I don't remember what the
20 date was when that came over, but yes, I saw an addendum.
21 Q. It's in the next tab, under tab 21.
22 A. So, like I said, five months later.
23 Q. Right.
24 A. Correct.
25 Q. So, I mean, what's -- as I look at this time

1 Q. And finally, there is what I would, under tab 26,
2 on November 26th, I would characterize this as an apology
3 by Mr. Jackson for a delay in responding in the
4 negotiations. Is that a fair inference?
5 MR. LENOX: If it is, it's the first one I ever
6 heard of.
7 THE WITNESS: Yeah, there were, because of the
8 development issues, there was some slow time on our
9 part. But at the same time, I mean, we delivered in
10 February, got it in July. So if you go five months
11 from July, all of a sudden you're in December, January.
12 So I don't think it's fair to say that one side was
13 doing everything immediately and one side was waiting
14 five months. It seems like it was both ways.
15 I'm going to say now on the last question you had,
16 just because I think it's pertinent, August of 2006,
17 which is where I was definitely out of the office those
18 two weeks, the case that we had for securities actually
19 occurred that second week of August. So from my
20 perspective, it was a very large case, and I was
21 right -- Siegel and I were the two key people, so there
22 may have been a little delay at that time from my
23 respect because it was a very large case that we don't
24 need to get into here.
25 BY MR. FARRIER:

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1 frame, the first time the materials are pulled together for
2 the FAC to actually act on the proposal, the first time
3 they're submitted to us in complete form is in January and
4 the FAC reviews it in February according to these
5 documents. Right?
6 A. That's the way the documents read. There were
7 additional things, I believe, that were also -- I don't
8 think the business plan was the only thing that was needed
9 to take it to the FAC, so there must have been other items
10 that were delivered, you know, along the way. That
11 appears, by these, to be the last thing that was needed.
12 Q. Okay. And then if we shift forward to tab 23 --
13 A. Yes.
14 Q. -- there is a response from you to Elisa's
15 question about where are we on the timeshare addendum. Do
16 you see that?
17 A. Yes.
18 Q. And you agree that that discussion was had at this
19 time. Correct?
20 A. Yes.
21 Q. And your response is, well, I've got to get back
22 to you. I've been out of the office. Correct?
23 A. Correct.
24 (Ms. Chapman exits the deposition room.)
25 BY MR. FARRIER:

1 Q. And all I'm trying to establish here is if you
2 step back and look at the time frame --
3 A. Yes.
4 Q. -- the first time that the FAC had an opportunity
5 to look at the full application was not until February
6 of 2006.
7 A. That's the way it appears with the delivery of the
8 business plan, yes.
9 Q. And I think that the way -- I'm not going to
10 improve, necessarily, on the way that you put it in the
11 middle of your answer there, which is there were delays on
12 both sides at different times and the fault for that delay
13 should be shared equally.
14 A. That's what I'm saying.
15 MR. FARRIER: That's all I have. Your counsel may
16 have questions, but I doubt it.
17 MR. LENOX: I don't have any follow up questions.
18 He will read.
19 (The deposition was concluded at 4:01 p.m.)
20
21
22
23
24
25

29 (Pages 113 to 116)

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CERTIFICATE OF OATH

State of Florida)
County of Orange)

I, the undersigned authority, certify that David
Crabtree personally appeared before me and was duly sworn
on May 17, 2010.

WITNESS my hand and official seal this
4th day of June, 2010.

Emily W. Andersen

Emily W. Andersen
Notary Public, State of Florida
Commission No. DD577617
Expires October 14, 2010



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CASE NO.: 4:08-cv-3590-TLW

WESTGATE MYRTLE BEACH, LLC, a

Florida Limited Liability

Company,

Plaintiff,

vs.

HOLIDAY HOSPITALITY

FRANCHISING, INC., a Delaware

Corporation,

Defendant.

IN RE: Deposition of David Crabtree

TAKEN ON: May 17, 2010

DATE SENT TO WITNESS: June 4, 2010

TO: Amanda L. Chapman, Esquire

Greenspoon Marder, P.A.

201 East Pine Street

Suite 500

Orlando, Florida 32801

The above referenced transcript has been completed and
awaits reading and signing.

Please notify the deponent to contact your office to
make arrangements to read your copy of the transcript.
Please complete by July 7, 2010.

The original of this deposition has been forwarded to
the ordering party and the errata, once received, will be
forwarded to all ordering parties as listed below.

Thank you.

Emily Andersen

cc: Richard A. Farrier, Jr., Esquire, Nelson, Mullins,
Riley & Scarborough, LLP, 151 Meeting Street, 6th Floor,
Charleston, South Carolina 29401

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DEPOSITION CERTIFICATE

State of Florida)
County of Orange)

I, EMILY W. ANDERSEN, Registered Merit Reporter,
certify that I was authorized to and did stenographically
report the deposition of David Crabtree; that a review of
the transcript was requested; and that the foregoing
transcript, pages 3 through 120, is a true and complete
record of my stenographic notes.

I further certify that I am not a relative, employee,
attorney, or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
counsel connected with the action, nor am I financially
interested in the action.

DATED this 4th day of June, 2010.

Emily W. Andersen

Emily W. Andersen, RMR

ERRATA SHEET

Do not write on transcript - enter changes on this sheet.

IN RE: Westgate Myrtle Beach vs. Holiday Hospitality
Franchising, Inc.

DEPO OF: David Crabtree

TAKEN ON: May 17, 2010

| Page # | Line # | Change/Correction | Reason |
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Under penalties of perjury, I declare that I have read the
foregoing document and that the facts stated in it are
true.

Date Signature of Deponent

David Crabtree

30 (Pages 117 to 120)